

# **EXHIBIT B**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 No. 17 Civ. 7857 (JMF)

5 ----- )  
6 U.S. BANK NATIONAL ASSOCIATION,  
7 solely in its capacity as indenture  
8 trustee of Windstream Services,  
9 LLC's 6 3/8% Senior Notes due 2023,

10  
11 Plaintiff-Counterclaim  
12 Defendant,

13 vs.

14 WINDSTREAM SERVICES, LLC,

15 Defendant-Counterclaimant,

16 vs.

17 AURELIUS CAPITAL MASTER, LTD.,

18 Counterclaim Defendant.

19 ----- )  
20  
21 VIDEOTAPED 30(b)(6) DEPOSITION OF  
22 WINDSTREAM SERVICES, LLC by  
23 BOB F. GUNDERMAN  
24 New York, New York  
25 November 3, 2017

26 Reported by:  
27 Linda Salzman  
28 JOB NO. 133132

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 November 3, 2017</p> <p>3 10:08 a.m.</p> <p>4</p> <p>5 Videotaped 30(b)(6) Deposition</p> <p>6 of WINDSTREAM SERVICES, LLC by BOB</p> <p>7 F. GUNDERMAN, held at the offices of</p> <p>8 Kirkland &amp; Ellis LLP, 601 Lexington</p> <p>9 Avenue, New York, New York, pursuant</p> <p>10 to Notice, before Linda Salzman, a</p> <p>11 Notary Public of the State of New</p> <p>12 York.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 FRIEDMAN KAPLAN SEILER &amp; ADELMAN</p> <p>5 Attorneys for Plaintiff</p> <p>6 7 Times Square</p> <p>7 New York, New York 10036</p> <p>8 BY: EDWARD FRIEDMAN, ESQ.</p> <p>9 CHRISTOPHER COLORADO, ESQ.</p> <p>10 JEFFREY FOURMAUX, ESQ.</p> <p>11</p> <p>12</p> <p>13 KIRKLAND &amp; ELLIS</p> <p>14 Attorneys for</p> <p>15 Defendant-Counterclaimant and the</p> <p>16 Witness</p> <p>17 601 Lexington Avenue</p> <p>18 New York, New York 10022</p> <p>19 BY: AARON MARKS, ESQ.</p> <p>20 RUSH HOWELL, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Continued)</p> <p>3</p> <p>4 KRAMER LEVIN NAFTALIS &amp; FRANKEL</p> <p>5 Attorneys for Counterclaim Defendant</p> <p>6 1177 Avenue of the Americas</p> <p>7 New York, New York 10036</p> <p>8 BY: ARTHUR AUFSES III, ESQ.</p> <p>9</p> <p>10</p> <p>11 Also Present:</p> <p>12 MICHAEL C. MCCARTHY, Maslon LLP</p> <p>13 DALE SWINDELL, Videographer</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 STIPULATIONS</p> <p>3 IT IS HEREBY STIPULATED AND</p> <p>4 AGREED by and among counsel for the</p> <p>5 respective parties hereto, that the</p> <p>6 sealing and certification of the</p> <p>7 within deposition shall be and the</p> <p>8 same are hereby waived;</p> <p>9 IT IS FURTHER STIPULATED AND</p> <p>10 AGREED all objections, except as to</p> <p>11 the form of the question, shall be</p> <p>12 reserved to the time of the trial;</p> <p>13 IT IS FURTHER STIPULATED AND</p> <p>14 AGREED that the within deposition may</p> <p>15 be signed before any Notary Public</p> <p>16 with the same force and effect as if</p> <p>17 signed and sworn to before the Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 THE VIDEOGRAPHER: This is the  
2 start of media labeled No. 1 of the  
3 video-recorded deposition of Bob F.  
4 Gunderman in the matter U.S. Bank  
5 National Association v. Windstream  
6 Services, LLC v. Aurelius Capital  
7 Master, Ltd. v. Windstream Services,  
8 LLC.  
9

10 This deposition is being held at  
11 601 Lexington Avenue, New York, New  
12 York, on November 3rd, 2017 at  
13 approximately 10:09 a.m.

14 My name is Dale Swindell. I'm  
15 the certified legal video specialist  
16 from TSG Reporting, Inc.,  
17 headquartered at 747 Third Avenue, New  
18 York, New York. The court reporter is  
19 Linda Salzman, in association with TSG  
20 Reporting.

21 Will counsel please introduce  
22 yourselves?

23 MR. FRIEDMAN: This is Edward  
24 Friedman, with the firm of Friedman  
25 Kaplan Seiler & Adelman. We represent

1 Plaintiff U.S. Bank as trustee. With  
2 me is my partner, Chris Colorado.

3 MR. AUFSES: Arthur Aufses,  
4 Kramer Levin Naftalis & Frankel, for  
5 Counterclaim Defendant Aurelius  
6 Capital Master, Ltd.  
7

8 MR. MARKS: Aaron Marks,  
9 Kirkland & Ellis, for  
10 Defendant-Counterclaimant Windstream  
11 Services, LLC, and the witness.

12 And with me today is my partner,  
13 Rush Howell.

14 THE VIDEOGRAPHER: Will the  
15 court reporter please swear in the  
16 witness.

17 B O B G U N D E R M A N,  
18 called as a witness, having been duly  
19 sworn by a Notary Public, was examined  
20 and testified as follows:

21 EXAMINATION BY

22 MR. FRIEDMAN:

23 Q. Good morning, Mr. Gunderman.

24 A. Good morning.

25 Q. You know that you are testifying

1 B. Gunderman  
2 here in response to what is referred to as  
3 a Notice of Rule 30(b)(6) Deposition?

4 A. Yes.

5 Q. And have you seen the document  
6 that is the Notice of Rule 30(b)(6)  
7 Deposition?

8 A. Yes.

9 Q. I'm going to show you that  
10 document. It has been marked as Exhibit  
11 5. I've opened it to the page that sets  
12 forth subject matters.

13 MR. MARKS: Just for the record,  
14 we served written objections to the  
15 30(b)(6) Notice. We stand by and do  
16 not waive those stated objections.  
17 However, in the interest of time and  
18 efficiency, I will not repeat those  
19 objections here.

20 BY MR. FRIEDMAN:

21 Q. You understand, Mr. Gunderman,  
22 that you have been designated by  
23 Windstream Services to testify on behalf  
24 of Windstream Services with respect to  
25 subject matter 4 on the 30(b)(6) Notice;

1 B. Gunderman  
2 is that correct?

3 A. Yes.

4 Q. And that subject matter 4  
5 relates to explanation and interpretation  
6 of the financial condition and operating  
7 performance of Holdings, Services, the  
8 transferor subsidiaries as reflected in  
9 certain documents. And I'm not going to  
10 read the document numbers. They're set  
11 forth here.

12 Do you know what is meant by the  
13 term "transferor subsidiaries"?

14 A. Yes.

15 Q. And what is meant by that?

16 A. Represents the subsidiaries  
17 within Windstream Services that  
18 transferred assets as part of the spin  
19 transaction in 2015.

20 Q. And those subsidiaries  
21 transferred assets to a company then known  
22 as CS&L, now known as Uniti; is that  
23 correct?

24 A. Correct.

25 Q. I'm going to start by showing

1 B. Gunderman  
 2 you an exhibit that we have marked as  
 3 Exhibit 13. It is an e-mail from Tony  
 4 Thomas to Bob Gunderman and others dated  
 5 April 15, 2013, document number WIN 20917.  
 6 (Exhibit 13, 5/15/13 e-mail,  
 7 Bates stamped WIN 20917, marked for  
 8 identification, as of this date.)  
 9 MR. MARKS: What exhibit are we  
 10 on?  
 11 MR. FRIEDMAN: Exhibit 13.  
 12 Q. Have you had an opportunity to  
 13 read Exhibit 13?  
 14 A. Yes.  
 15 Q. Is Exhibit 13 an e-mail that you  
 16 received from Tony Thomas on April 15,  
 17 2013?  
 18 A. I'm on the receiving of this,  
 19 yes.  
 20 Q. So I just need to confirm for  
 21 the record, did you receive this e-mail?  
 22 A. Yes.  
 23 Q. On April 15, 2013, correct?  
 24 A. Yes.  
 25 Q. And who was Tony Thomas at that

1 B. Gunderman  
 2 time?  
 3 A. Tony Thomas at that time was our  
 4 chief financial officer.  
 5 Q. And what was your position at  
 6 that time?  
 7 A. I was the treasurer of  
 8 Windstream.  
 9 Q. What is your position currently?  
 10 A. Chief financial officer.  
 11 Q. When did you become chief  
 12 financial officer?  
 13 A. December of 2014.  
 14 Q. And is Tony Thomas still with  
 15 the company?  
 16 A. He is.  
 17 Q. And what's his position?  
 18 A. Chief executive officer.  
 19 Q. And you have been chief  
 20 financial officer since 2014, you said,  
 21 correct?  
 22 A. Correct.  
 23 Q. And you are the chief financial  
 24 officer of what company or companies?  
 25 A. I'm the chief financial officer

1 B. Gunderman  
 2 of Windstream Holdings and all of its  
 3 subsidiaries.  
 4 Q. And is Tony Thomas the CEO of  
 5 Windstream Holdings and all of its  
 6 subsidiaries?  
 7 A. Yes.  
 8 Q. In Exhibit 13, you see in the  
 9 first line of the e-mail after the word  
 10 Bob, there's a reference to something  
 11 called Captive. Do you see that?  
 12 A. I see that.  
 13 Q. And what is meant by "Captive"?  
 14 MR. MARKS: Objection to form.  
 15 A. As I read this today, I don't  
 16 recall the details of the conversations we  
 17 were having on this matter. I can only  
 18 read the words on the page.  
 19 Q. Do you have an understanding as  
 20 you read it what is meant by "Captive"?  
 21 A. I can read the words, "Here are  
 22 some questions I have related to the  
 23 Captive." Without more context, I don't  
 24 know what that means, what context that  
 25 is.

1 B. Gunderman  
 2 Q. Can you tell us, having read the  
 3 entire document, whether this document  
 4 relates to the planning process that  
 5 ultimately led to the spin-off and  
 6 leaseback transaction in April of 2015?  
 7 A. All I can tell you is this is  
 8 what the document says, which, you know,  
 9 it simply says that, "We need a capital  
 10 structure that works with the Indenture;  
 11 we may be able to use the HoldCo strategy  
 12 here. Create HoldCo and put Windstream  
 13 Financial underneath HoldCo."  
 14 I don't recall the specifics of  
 15 what he was meaning at the time. It's  
 16 been a number of years since I received  
 17 this e-mail and I don't know what exactly  
 18 he was referring to in it.  
 19 Q. Do you have any understanding as  
 20 to what is meant by putting Windstream  
 21 Financial underneath HoldCo?  
 22 A. I don't recall what he was  
 23 referring to at that time.  
 24 Q. Do you see in the second  
 25 paragraph of the e-mail, the last sentence

1 B. Gunderman  
 2 reads:  
 3 "Remember, the sales --  
 4 leaseback provision in the indenture can  
 5 be a limited factor here."  
 6 Do you see that?  
 7 A. I see that.  
 8 Q. Do you have any understanding as  
 9 to what that refers to?  
 10 MR. MARKS: Objection to form.  
 11 A. I don't recall what he was  
 12 referring to in his e-mail.  
 13 Q. Can you tell us what your role  
 14 was in the planning of the April 2015  
 15 transaction?  
 16 A. Can you be more specific?  
 17 Q. No. I mean, I would like to  
 18 hear you generally explain what your role  
 19 was in the transaction.  
 20 A. Well, you know, the transaction,  
 21 the planning steps of the transaction went  
 22 on for multiple months. Multiple years.  
 23 Quarters. I was the treasurer. At that  
 24 time, my role would have been to  
 25 contemplate the capitalization of the

1 B. Gunderman  
 2 NewCo, the new REIT.  
 3 I would have been responsible  
 4 for investor relations, which would have  
 5 been, you know, think of how we would  
 6 communicate the benefits of the  
 7 transaction to all of our constituents.  
 8 And also managed financial  
 9 planning, which given that role, I would  
 10 have been involved in understanding the  
 11 financial impacts of any number of, you  
 12 know, financial assumptions and outcomes  
 13 of whatever was current with Windstream at  
 14 the time.  
 15 So in the context of this  
 16 transaction, that would have been my  
 17 contribution to the project.  
 18 Q. And as of April 2013, had the  
 19 planning for the transaction started?  
 20 A. I don't recall the exact timing  
 21 of the planning of the transaction. I do  
 22 recall that sometime in 2013 we were  
 23 approached with a concept of a REIT  
 24 spin-off. I wasn't heavily involved early  
 25 on in the planning of the transaction. As

1 B. Gunderman  
 2 the ideation became more developed, I  
 3 became more involved as the project  
 4 progressed, but in the initial ideation,  
 5 planning, structuring, I wasn't involved  
 6 in driving that.  
 7 Q. You referred in your last answer  
 8 to, "We were approached with a concept of  
 9 a REIT spin-off."  
 10 Who is the "we" in that  
 11 statement?  
 12 A. The company.  
 13 Q. And the company at that time was  
 14 what? What was the name of the company?  
 15 A. Windstream Services.  
 16 Q. Because there was no Holdings at  
 17 that time, correct?  
 18 A. I forget the exact day of the  
 19 establishment of Holdings, but you know,  
 20 we put the HoldCo structure in somewhere,  
 21 I believe, in 2013.  
 22 Q. And who approached Windstream  
 23 Services?  
 24 A. My recollection was, is that  
 25 Bank of America was the advisor who

1 B. Gunderman  
 2 brought the original idea.  
 3 Q. And do I understand you  
 4 correctly that the idea came from Bank of  
 5 America?  
 6 A. Yes.  
 7 Q. It wasn't something being  
 8 planned and discussed within Windstream  
 9 prior to Bank of America?  
 10 A. Not to my knowledge.  
 11 Q. And who at Bank of America was  
 12 involved in approaching Windstream?  
 13 A. I don't remember all the  
 14 accounting that was responsible. I think  
 15 Amar Mirza might have been a structuring  
 16 person who would have presented the idea  
 17 at some point, and our lead investment  
 18 banking advisor at the time was, I think,  
 19 Mark Bush would be the two that I would  
 20 have remembered from the account team that  
 21 would have approached us.  
 22 Q. As the planning progressed  
 23 through to the time of the actual  
 24 transaction in April of 2015, did Bank of  
 25 America continue to be involved?



1 B. Gunderman  
 2 A. They were.  
 3 Q. Any other financial or banking  
 4 advisors involved in the transaction?  
 5 A. Yes.  
 6 Q. And who was that?  
 7 A. Stephens Inc. and J.P. Morgan.  
 8 Q. And what roles were played by  
 9 Stephens Inc. and J.P. Morgan?  
 10 A. How I would describe it is Bank  
 11 of America initially brought the idea of  
 12 the structure. And, you know, because of  
 13 the complexity of the transaction and the  
 14 ultimate need to finance the transaction,  
 15 we sought additional advisors. J.P.  
 16 Morgan was brought in to help with those  
 17 discussions and eventually with the  
 18 financing alongside Bank of America. And  
 19 Stephens was a financial advisor advising  
 20 on any number of portions of the  
 21 transaction. They did not participate in  
 22 the financing portion of the transaction.  
 23 Q. Prior to the planning for this  
 24 transaction, did Windstream have a  
 25 relationship with Bank of America?

1 B. Gunderman  
 2 A. Yes.  
 3 Q. And prior to the planning of  
 4 this transaction, did Windstream have a  
 5 relationship with J.P. Morgan?  
 6 A. Yes.  
 7 Q. And prior to the planning of  
 8 this transaction, did Windstream have a  
 9 relationship with Stephens Inc.?  
 10 A. Yes.  
 11 Q. Who brought in Stephens Inc. and  
 12 J.P. Morgan?  
 13 A. My recollection is it would have  
 14 been Tony Thomas, who was our chief  
 15 financial officer at the time.  
 16 Q. Who at Stephens Inc. was  
 17 involved in the transaction?  
 18 A. Kenny Gunderman would have been  
 19 the lead advisor relationship person, and  
 20 I recall that Matt Dement would have been  
 21 another key individual.  
 22 Q. And at J.P. Morgan?  
 23 A. The most senior relationship  
 24 person that we would have dealt with at  
 25 J.P. Morgan would have been Fred Turpin.

1 B. Gunderman  
 2 There were other advisors at the time.  
 3 The most senior person I remember from a  
 4 financing advisory standpoint would have  
 5 been Jessica Kearns.  
 6 Q. Is Kenny Gunderman related to  
 7 you?  
 8 A. He is.  
 9 Q. What's the relationship?  
 10 A. He's my brother.  
 11 Q. If your name was Smith, I  
 12 probably wouldn't have asked the question.  
 13 You referred a little while ago  
 14 to your responsibility for investor  
 15 relations. Do you recall that?  
 16 A. Yes.  
 17 Q. And you referred to benefits to  
 18 all of our constituents. Do you recall  
 19 that?  
 20 A. Yes.  
 21 Q. And when you talk about all of  
 22 our constituents, who would that include?  
 23 A. I would be referencing equity  
 24 holders, bondholders, loan holders,  
 25 customers, regulators, employees. Those

1 B. Gunderman  
 2 would be the constituents that I would be  
 3 thinking of.  
 4 Q. Do you recall that as the  
 5 planning of this transaction went forward,  
 6 one of the concerns and issues to be  
 7 addressed was the sale and leaseback  
 8 covenant in the bond indenture?  
 9 A. I wasn't involved in the initial  
 10 structuring, and so I wouldn't have been  
 11 part of that discussion.  
 12 Q. Were you aware that the sale and  
 13 leaseback covenant in the bond indenture  
 14 was one of the issues that was being dealt  
 15 with as the transaction was planned?  
 16 A. I was aware that the conclusion  
 17 was that the issue was not of  
 18 consideration.  
 19 Q. Can you explain what you mean by  
 20 that?  
 21 A. Because the transaction  
 22 advisory, the individuals as part of the  
 23 transaction advisory concluded that that  
 24 was not a consideration.  
 25 Q. And who told you that?

1 B. Gunderman  
 2 A. My recollection would be that  
 3 John Fletcher as our general counsel would  
 4 have advised us on that.  
 5 Q. Just help me out with the  
 6 timing. At some point, do I understand  
 7 you correctly, at some point you were  
 8 told, in words or substance, the sale and  
 9 leaseback covenant in the bond indenture  
 10 is not a problem for this transaction, is  
 11 that correct?  
 12 A. That's, I think that would be  
 13 how I would characterize it, yes.  
 14 Q. And approximately when was that  
 15 information provided to you?  
 16 A. I don't remember the exact  
 17 timing of when that was provided to me.  
 18 Q. At some point prior to that, had  
 19 anybody mentioned to you that people at  
 20 Windstream were thinking about the sale  
 21 and leaseback covenant in the bond  
 22 indenture?  
 23 A. I don't recall that  
 24 conversation.  
 25 Q. Were you aware, in your own

1 B. Gunderman  
 2 mind, that the sale and leaseback covenant  
 3 in the bond indenture could be an issue?  
 4 A. I was relying upon our  
 5 structuring advisors to include our  
 6 internal and external counsel to advise on  
 7 that. And that was my reliance.  
 8 Q. So just to be clear, in the  
 9 planning process, you, as the treasurer  
 10 and then CFO in 2014, you were aware of  
 11 the sale and leaseback covenant, that was  
 12 a potential issue, is that fair?  
 13 A. I wouldn't characterize it that  
 14 way.  
 15 Q. How would you characterize it?  
 16 A. I would characterize it as I  
 17 characterized it earlier, which was I was  
 18 relying upon our internal and external  
 19 advisors to speak to the structure of the  
 20 transaction, and I accepted their expert  
 21 advice on the conclusion that it wasn't an  
 22 issue.  
 23 Q. And when -- approximately how  
 24 much time elapsed from when you first  
 25 became aware that the covenant might be an

1 B. Gunderman  
 2 issue to the time you heard from the  
 3 advisors we've decided we can structure  
 4 without worrying about the issue?  
 5 MR. MARKS: Objection to the  
 6 form of the question.  
 7 Q. You may answer.  
 8 A. As I testified just a few  
 9 seconds ago, I did not consider it to be  
 10 an issue because I was advised per our  
 11 internal and external counsel that there  
 12 is no concern.  
 13 Q. I'm trying to understand, at  
 14 some point in time, you, in your own mind,  
 15 knew that the sale and leaseback covenant  
 16 at least needed to be considered in  
 17 connection with structuring the  
 18 transaction; is that correct?  
 19 A. I knew in my own mind that the  
 20 structuring of the transaction was going  
 21 to be handled by other experts in our  
 22 company on advisement with other advisors.  
 23 And that the scope of the  
 24 responsibility for that decision and  
 25 conclusion would be in their hands and not

1 B. Gunderman  
 2 my own, and I accepted their analysis and  
 3 their conclusion.  
 4 Q. Well, let me just try to  
 5 understand, and if you're unable to answer  
 6 the question, you'll just tell me.  
 7 At some point prior to the time  
 8 you heard the conclusions, were you aware,  
 9 in your own mind, that the sale and  
 10 leaseback covenant in the indenture was an  
 11 issue that had to be taken into account in  
 12 structuring?  
 13 A. No. In my own mind, I did not  
 14 focus on that.  
 15 Q. I didn't ask whether you focused  
 16 on it. I asked whether were aware of it.  
 17 A. Was I aware of what?  
 18 Q. That's a fair question,  
 19 Mr. Gunderman. Two things.  
 20 Were you aware that the bond  
 21 indenture contained a sale and leaseback  
 22 covenant?  
 23 A. Yes.  
 24 Q. And as you heard about the  
 25 planning of this transaction, were you



1 B. Gunderman  
2 aware in your own mind that someone would  
3 have to be considering the sale and  
4 leaseback covenant?

5 A. Yes.

6 Q. Okay. I'm going to show you a  
7 document that we're marking as Exhibit 46.  
8 And this was not marked yesterday.

9 (Exhibit 46, 8/6/14 e-mail and  
10 attachments, Bates WIN 20241 through  
11 20243; WIN 20340 through 20366, marked  
12 for identification, as of this date.)

13 BY MR. FRIEDMAN:

14 Q. Exhibit 46 is an e-mail from  
15 Mary Michaels to various people, with a cc  
16 to Tony Thomas, Bob Gunderman and John  
17 Fletcher, dated August 6, 2014. The cover  
18 e-mail is August 6, 2014.

19 And I will just say for the  
20 record that the cover e-mail refers to  
21 various attachments. We have included  
22 just one of the attachments. And that's  
23 why, what I refer to as the cover e-mail,  
24 it seems to go from pages WIN 20241  
25 through 20243. And then the attachment we

1 B. Gunderman  
2 have included goes from WIN 20340 through  
3 20366.

4 So, Mr. Gunderman, the first  
5 question I have for you is Exhibit 46 an  
6 e-mail with attachments that you received  
7 on August 6, 2014?

8 A. Well, I can only read the e-mail  
9 that's been presented to me, and I don't  
10 recall the e-mail. But on the first page  
11 of this document, it does show that Mary  
12 Michaels sent an e-mail that I was cc'd  
13 on.

14 Q. And you have no reason to doubt  
15 that you received it?

16 A. I have no reason to doubt that  
17 the first page of this is an e-mail sent  
18 to me.

19 Q. Okay. And you see that on the  
20 first page of the e-mail, there is a  
21 reference to attachments?

22 A. I would pause by saying this is  
23 about a 30-page document, and I would like  
24 to read it in its entirety.

25 Q. I'm going to give you an

1 B. Gunderman  
2 opportunity to do whatever you want.  
3 Just --

4 A. I don't know how I can answer  
5 your questions on a document I haven't had  
6 a chance to review.

7 Q. I'm asking you a question about  
8 page 1 of the document.

9 A. Okay. Can I read page 1 of the  
10 document?

11 Q. I'm going to ask my question and  
12 then you should always feel free to read  
13 whatever you feel you need to read to  
14 answer the question.

15 A. Thank you.

16 Q. So my question is, do you see  
17 the word "attachments" near the top of  
18 page 1 of the e-mail?

19 A. I do. I see -- I do I see the  
20 word "attachments."

21 Q. And then after the word  
22 "attachments," if you follow along the  
23 first line, you come to, near the end of  
24 the first line: Project RITE-master Q and  
25 A doc.

1 B. Gunderman  
2 Do you see that on the first  
3 page of the e-mail?

4 A. I do see those words.

5 Q. So now I'm going to ask you a  
6 couple of questions about the attachment  
7 that is entitled Project RITE master  
8 question and answer document starting on  
9 page WIN 20340.

10 So my first question is, with  
11 reference to the attachment entitled  
12 Project RITE master question and answer  
13 document, can you tell us what that  
14 document is, please?

15 A. Yeah, I'm going to need some  
16 time to read the document.

17 Q. Yes, that's totally fine.

18 A. Thank you.

19 (Witness reading document.)

20 A. Can you ask your question again?

21 Q. With reference to the attachment  
22 entitled Project RITE master question and  
23 answer document, can you tell us what that  
24 document is, please?

25 A. As I reviewed the document, what

1 B. Gunderman

2 I believe it is a summary of some of  
3 the key question and answer responses for  
4 the relevant points for the transaction of  
5 Project RITE.

6 Q. And these would be questions and  
7 answers for whom?

8 A. We would have been preparing  
9 ourselves for investor question and  
10 answers and also other constituencies  
11 whether its employees, regulators, to be  
12 prepared to respond to questions around  
13 the structuring of the transaction and the  
14 impacts of it.

15 Q. The constituencies would include  
16 bondholders?

17 A. Yes.

18 Q. Would these also be questions  
19 and answers to be used in communications  
20 with rating agencies?

21 A. Yes.

22 Q. Did you have a role in the  
23 preparation of the master question and  
24 answer document?

25 A. I would have been -- I was the

1 B. Gunderman

2 treasurer and head of investor relations,  
3 and Mary Michaels, at the time this was  
4 prepared, would have been a direct report  
5 of mine. She was the head of investor  
6 relations reporting to me. And so I would  
7 have had a role in reviewing this document  
8 and giving input.

9 Q. And this document reflects --  
10 well, you've had a chance to read through  
11 the entire document, correct?

12 A. Correct.

13 Q. Do you find that any of the  
14 answers to the questions are in error or  
15 otherwise not correct?

16 MR. MARKS: Objection to the  
17 form of the question.

18 A. I would have to, you know, you  
19 would have to ask something more  
20 specifically. I didn't see anything in my  
21 review that I would say is incorrect. But  
22 if you have a specific question, I would  
23 be happy to answer it.

24 Q. Just so the record is clear, you  
25 did read every page of the document just

1 B. Gunderman

2 now, correct?

3 A. I did, yes.

4 Q. Let me ask you, please, to turn  
5 to page 350, where you will see question  
6 31 at the bottom of the page.

7 Do you see that?

8 A. I do see that.

9 Q. And you see at the very bottom  
10 of the page the bullet point that reads:

11 "We do not believe that the  
12 Windstream indentures require any consents  
13 of waivers to effect the transaction (do  
14 not go into detail below unless  
15 specifically asked on each point)."

16 Do you see that sentence that I  
17 just read?

18 A. I do.

19 Q. And where it says in the middle  
20 of that sentence "consents of waivers," is  
21 that just a little typo? It should be  
22 "contents or waivers"?

23 A. I don't know. It's been so  
24 long. I can't remember, but I can read  
25 the words on the page.

1 B. Gunderman

2 Q. And you're not able to say  
3 whether it is correct with the word "of"  
4 or whether the word should be "or"?

5 A. As I sit here today, I don't  
6 know if the word should be "of" or "or."

7 Q. Do you understand the purpose of  
8 the parenthetical that reads "do not go  
9 into detail below unless specifically  
10 asked on each point"?

11 A. I can read the words on the  
12 page, so I do understand the words on the  
13 page.

14 Q. And what's your understanding of  
15 the words on the page?

16 A. "Do not go into detail below  
17 unless specifically asked on each point."

18 Q. And do you have any  
19 understanding as to the purpose for that  
20 instruction or direction?

21 A. It simply says "do not go into  
22 the detail below unless specifically asked  
23 on each point."

24 Q. Was that a direction or  
25 instruction that came from you to the

1 B. Gunderman  
 2 people who reported to you in investor  
 3 relations?  
 4 A. I don't recall what our  
 5 conversations were three or four years  
 6 ago.  
 7 Q. Turn, please, to the next page  
 8 of the document, 351. The third bullet  
 9 point there reads:  
 10 "If pressed on sale-leaseback  
 11 provision: Given that the lease is being  
 12 implemented at Windstream Holdings, it  
 13 does not impact any covenants in the  
 14 Windstream indentures, including the  
 15 sale-leaseback provisions."  
 16 Do you see that bullet point?  
 17 A. Yes.  
 18 Q. Do you have an understanding  
 19 about what is meant by that?  
 20 A. Can I read the words on the page  
 21 and understand them?  
 22 Q. Okay. What's your  
 23 understanding?  
 24 A. Given that the lease is being  
 25 implemented at Windstream Holdings, which

1 B. Gunderman  
 2 it was, it does not impact any covenants  
 3 in the Windstream indentures, including  
 4 the sale-leaseback provisions. I  
 5 understand those words.  
 6 Q. Well, do you have an  
 7 understanding why someone would say that  
 8 the lease being implemented at Windstream  
 9 Holdings has something to do with whether  
 10 the sale and leaseback provision is  
 11 impacted?  
 12 MR. MARKS: Objection to the  
 13 form.  
 14 A. I have an understanding of we  
 15 were preparing for potential questions on  
 16 the structuring of the transaction, and  
 17 this was a potential response to a  
 18 question on the structure of the  
 19 transaction.  
 20 Q. My question was: Do you have an  
 21 understanding why someone preparing this  
 22 document would say that given that the  
 23 lease is being implemented at Windstream  
 24 Holdings, it does not impact the sale and  
 25 leaseback provision?

1 B. Gunderman  
 2 A. Yes, I understand that.  
 3 Q. Okay. What's your understanding  
 4 of that?  
 5 A. I answered that earlier.  
 6 Q. Let me ask the question again.  
 7 Why would the lease being  
 8 implemented at Windstream Holdings have  
 9 something to do with whether the sale and  
 10 leaseback provision is impacted?  
 11 A. The words on the page simply  
 12 indicate that because the lease is being  
 13 implemented at Windstream Holdings, it  
 14 does not impact the covenants in the  
 15 Windstream indentures, including the sale  
 16 and leaseback provisions. That's what it  
 17 means.  
 18 Q. My question to you is: Why  
 19 would Windstream Holdings as the lessor  
 20 have something to do with whether the sale  
 21 and leaseback covenant is impacted?  
 22 MR. MARKS: Objection to form.  
 23 A. I don't know how else to answer  
 24 your question other than the way I  
 25 answered it. I've answered it the way I

1 B. Gunderman  
 2 understand it.  
 3 Q. Do you have an understanding of  
 4 what the sale and leaseback covenant in  
 5 the indenture provides?  
 6 A. Generally.  
 7 MR. MARKS: Objection to form.  
 8 Q. What's your general  
 9 understanding?  
 10 A. Generally I understand that the  
 11 covenant governs the ability to sell  
 12 assets and lease them back.  
 13 Q. Do you have any understanding  
 14 beyond that?  
 15 A. I would have to review the  
 16 indenture to give you a more detailed  
 17 understanding of it.  
 18 Q. Have you ever reviewed the  
 19 indenture before?  
 20 A. Of course.  
 21 Q. When?  
 22 A. I can't point to specific times,  
 23 but I reviewed it over, you know, as  
 24 needed, over time.  
 25 Q. Did you review it in connection

1 B. Gunderman  
 2 with the planning of this transaction?  
 3 A. I did.  
 4 Q. Did you review the sale and  
 5 leaseback covenant in connection with the  
 6 planning of this transaction?  
 7 A. I did.  
 8 Q. At the time when this  
 9 transaction was being planned, did you  
 10 have an understanding of the sale and  
 11 leaseback covenant?  
 12 A. I had an understanding that our  
 13 advisors, both internal and external, were  
 14 opining on the covenants in the provisions  
 15 that related to the structure of the  
 16 transaction, and I relied upon their  
 17 expert advice around that analysis.  
 18 Q. My question was: At the time  
 19 the transaction was being planned, did you  
 20 have an understanding of the sale and  
 21 leaseback covenant in the indenture?  
 22 A. As a treasurer, I would have  
 23 understood the sale and leaseback covenant  
 24 in the indenture, yes.  
 25 Q. Did you have a better

1 B. Gunderman  
 2 understanding at the time this transaction  
 3 was being planned than you have now?  
 4 MR. MARKS: Objection to the  
 5 form.  
 6 A. I don't know how to answer that  
 7 question. I have an understanding of the  
 8 covenant.  
 9 Q. Do you know why Windstream  
 10 Holdings was created?  
 11 A. Yeah. We created Windstream  
 12 Holdings, I recall, at the time being --  
 13 we were one of the companies in  
 14 telecommunications in the cable industry,  
 15 our peers, but we were in the minority of  
 16 companies who did not have a holding  
 17 structure, which was, for us, we thought  
 18 was potentially something that limited our  
 19 strategic flexibility.  
 20 And so, yeah, that's what I  
 21 recall.  
 22 Q. Are you aware, in connection  
 23 with the April 2015 transaction, one of  
 24 the agreements signed is a master lease?  
 25 A. I am aware.

1 B. Gunderman  
 2 Q. And do you know who signed the  
 3 master lease?  
 4 A. I don't know who signed it  
 5 actually.  
 6 Q. I don't mean which individual.  
 7 I mean which company.  
 8 A. Windstream Holdings is the  
 9 obligor of the lease.  
 10 Q. Who is on the other side of the  
 11 master lease?  
 12 A. CS&L.  
 13 Q. And were you involved in the  
 14 decision at Windstream that Windstream  
 15 Holdings should be the Windstream entity  
 16 that signs the master lease?  
 17 A. I was not involved in the  
 18 original discussions and the ultimate  
 19 decision around who would be the obligor  
 20 of the master lease.  
 21 Q. Do you know who made the  
 22 decision that Windstream Holdings should  
 23 sign the master lease?  
 24 A. My recollection is that John  
 25 Fletcher, as our general counsel at the

1 B. Gunderman  
 2 time, would have been responsible for the  
 3 contemplation of the obligor and the  
 4 detailed provisions of the master lease.  
 5 Q. Did you ever obtain an  
 6 understanding as to why Windstream  
 7 Holdings was the party signing the master  
 8 lease?  
 9 A. I did.  
 10 Q. And what was the understanding  
 11 you obtained as to why Windstream Holdings  
 12 was signing the master lease?  
 13 A. We wanted to make sure that we  
 14 preserved maximum flexibility with the  
 15 administration of the obligations in the  
 16 lease by having the obligation be at the  
 17 Holdings company level. It gave us the  
 18 maximum flexibility to do that.  
 19 The second reason was that we  
 20 felt like it gave us negotiating leverage  
 21 with CS&L on an eventual renegotiation and  
 22 extension of the lease, because by  
 23 definition, that being at the Holdings  
 24 company level, it was subordinate to the  
 25 obligations that were set at our Services



1 B. Gunderman  
 2 group, Windstream Services.  
 3 Q. And can you explain how having  
 4 Holdings sign the lease provided more  
 5 flexibility?  
 6 A. Well, I mean, the way that we  
 7 would discharge our obligations, you know,  
 8 by having it at the senior-most entity  
 9 level of the company just gave us maximum  
 10 flexibility on any number of terms going  
 11 forward.  
 12 Q. For example, what terms?  
 13 A. Well, if we worked to renew the  
 14 lease in 10 or 15 years and we wanted to  
 15 not renew portions of it, or renew under a  
 16 different technology, it just gave us more  
 17 flexibility to have the ability to  
 18 structure it at the Holdings company level  
 19 versus at a lower level in the  
 20 organization.  
 21 Q. Can you explain how the  
 22 signatory on the master lease provides  
 23 that flexibility? More specifically, what  
 24 would the difference be if the transferor  
 25 subsidiaries had signed the master lease?

1 B. Gunderman  
 2 A. Sure.  
 3 Q. You referred to that there would  
 4 be more leverage on the Windstream side,  
 5 because having the lease signed at the  
 6 Holdings level, that meant the obligations  
 7 under the lease would be subordinate to  
 8 obligations at Services and Services  
 9 subsidiaries.  
 10 Did I understand you correctly?  
 11 A. I was referring to negotiating  
 12 leverage.  
 13 Q. Negotiating leverage. Okay.  
 14 What did you mean when you said the  
 15 obligations at the holding level would be  
 16 subordinate to obligations at the level of  
 17 Services?  
 18 A. Well, by definition, the debt  
 19 obligations and other material obligations  
 20 of the company set at the Services level  
 21 or below, and all of the covenant  
 22 structures of our material debt  
 23 instruments are at that level, and by  
 24 definition, that provides a structural  
 25 seniority to a junior obligation that sits

1 B. Gunderman  
 2 A. I gave you my understanding of  
 3 the flexibility. At the time, there was  
 4 no looking forward contemplation of  
 5 anything specific. We just simply  
 6 concluded, through the advice of our  
 7 internal and external transaction counsel,  
 8 that that would be the legal entity that  
 9 would give us the most flexibility for  
 10 strategic opportunities in the future, and  
 11 I gave you a couple of examples of how I  
 12 think about that.  
 13 Q. I'm going to show you a document  
 14 marked as Exhibit 26.  
 15 (Exhibit 26, 4/29/14 letter from  
 16 Moody's Investor Services to Bob  
 17 Gunderman, Bates stamped WIN 20110 to  
 18 WIN 20113, marked for identification,  
 19 as of this date.)  
 20 BY MR. FRIEDMAN:  
 21 Q. Here you go, Mr. Gunderman.  
 22 Actually, before I ask you about  
 23 Exhibit 26, if you put it down, let me  
 24 just ask you a question about what you  
 25 said a moment ago.

1 B. Gunderman  
 2 outside the boundaries of that structure.  
 3 Q. When you say structural  
 4 seniority for junior obligation, are you  
 5 referring to a structural seniority for  
 6 the debt obligations at the Services  
 7 level?  
 8 A. What I simply said was that the  
 9 obligor, being Holdings, you know, is, in  
 10 my judgment, is junior to the seniority of  
 11 what the obligations are at Services.  
 12 Q. Would you agree with me that as  
 13 a practical matter, the obligations under  
 14 the master lease have a priority over the  
 15 obligations at the Services level?  
 16 MR. MARKS: Objection to form.  
 17 Q. Do you understand the question?  
 18 A. No. I don't understand your  
 19 question.  
 20 Q. What would be the consequences  
 21 for the Windstream companies if payments  
 22 due were not made under the master lease?  
 23 A. We would default on the master  
 24 lease.  
 25 Q. And then what would happen?

1 B. Gunderman  
 2 A. I don't know. You would have to  
 3 ask Uniti.  
 4 Q. Could Services and its  
 5 subsidiaries continue in business if Uniti  
 6 took back the properties as a result of  
 7 the default?  
 8 A. I don't know how to answer a  
 9 hypothetical question like that.  
 10 Q. You just don't know?  
 11 A. I don't know.  
 12 Q. You don't know. Okay.  
 13 So just to be clear, could the  
 14 subsidiaries of Services engage in their  
 15 business without the use of the leased  
 16 property? That's my question to you. Can  
 17 you answer that question?  
 18 MR. MARKS: That's beyond the  
 19 scope of the notice as to what  
 20 Mr. Gunderman was noticed for.  
 21 MR. FRIEDMAN: I'm not -- to the  
 22 extent I ask Mr. Gunderman questions  
 23 that go beyond Topic 4, then he's  
 24 testifying as a witness so, and not as  
 25 a 30(b)(6) witness. Okay.

1 B. Gunderman  
 2 Q. Do you need the question read  
 3 back?  
 4 A. Sure.  
 5 Q. So the question is: Could the  
 6 subsidiaries of Services engage in their  
 7 business without the use leased property?  
 8 A. The subsidiaries of Services are  
 9 express beneficiaries and use the assets  
 10 that are included in the lease, which is  
 11 obligated by Holdings, and they use those  
 12 assets today to operate, you know, their  
 13 subsidiary businesses.  
 14 Q. And the transferor subsidiaries  
 15 need those assets to operate their  
 16 businesses, correct?  
 17 A. They use it today.  
 18 Q. They need it today, correct?  
 19 A. Correct.  
 20 Q. And if Uniti took action to take  
 21 back the property, the leased property,  
 22 could the subsidiaries of Services today  
 23 continue with their business?  
 24 MR. MARKS: Objection to the  
 25 form of the question.

1 B. Gunderman  
 2 A. It's a hypothetical. I haven't  
 3 thought about it.  
 4 Q. You don't know the answer to  
 5 that hypothetical question; is that  
 6 correct?  
 7 A. I don't.  
 8 Q. I've shown you Exhibit 26. I'm  
 9 going to ask you a question about it. The  
 10 first question I'm going to ask you is  
 11 Exhibit 26, which I will identify for the  
 12 record is a letter from Moody's Investor  
 13 Services to Bob Gunderman dated April 29,  
 14 2014. It is a document that goes from  
 15 page WIN 20110 through WIN 20113.  
 16 And my first question to you,  
 17 Mr. Gunderman, is: Is this letter that  
 18 you received from Moody's Investor  
 19 Services on April 29, 2014?  
 20 A. It is addressed to me.  
 21 Q. And you received it on April  
 22 29th, on or about April 29, 2014?  
 23 A. I would assume, yes.  
 24 Q. Then I have a question for you  
 25 on page 20112.

1 B. Gunderman  
 2 A. Could I have the opportunity to  
 3 read the document, please?  
 4 Q. Yes.  
 5 A. Thank you.  
 6 (Pause.)  
 7 A. I've read it.  
 8 Q. Have you read the entire  
 9 document that's Exhibit 26?  
 10 A. Yes.  
 11 Q. Would you look at the page of  
 12 the document that is WIN 20112, please?  
 13 A. Okay.  
 14 Q. And I'd like to call your  
 15 attention to the paragraph in the middle  
 16 of the page that begins with the words,  
 17 "Through this transaction."  
 18 Please tell me when you have  
 19 located that paragraph.  
 20 A. I've located it.  
 21 Q. And if you look at the third  
 22 sentence in that paragraph that begins at  
 23 the end of the third line, starting with  
 24 the word "Although," please tell me when  
 25 you've located that sentence.



1 B. Gunderman  
 2 A. I've located that sentence.  
 3 Q. I'm going to read that sentence  
 4 into the record:  
 5 "Although the lease payment will  
 6 be contractually junior to most other  
 7 obligations of Windstream and HoldCo, the  
 8 strategic importance of the lease will  
 9 effectively make it one of the company's  
 10 highest priority cash payments."  
 11 Do you see that sentence?  
 12 A. Yes.  
 13 Q. Do you understand what Moody's  
 14 means in writing that sentence?  
 15 A. Yes. I can read the words on  
 16 the page and I --  
 17 Q. Obviously not to be sarcastic,  
 18 Mr. Gunderman, any of us can read the  
 19 words on the page. The question for you  
 20 is: Do you understand what Moody's means  
 21 in making the statement that I just read?  
 22 A. Yes. They mean that the lease  
 23 payment will be contractually junior to  
 24 most other obligations of Windstream and  
 25 HoldCo, and it is, the strategic

1 B. Gunderman  
 2 importance of the lease will effectively  
 3 make it one of the company's highest  
 4 priority cash payments. I do understand  
 5 that.  
 6 Q. Do you agree with that  
 7 statement?  
 8 A. I agree that the payment is  
 9 contractually junior to most other  
 10 obligations of Windstream and HoldCo, just  
 11 as I testified to earlier. I agree that  
 12 the lease is important.  
 13 Q. Do you agree that the importance  
 14 of the lease will effectively make the  
 15 lease obligations one of the company's  
 16 highest priority cash payments?  
 17 A. It is a high priority cash  
 18 payment.  
 19 Q. Do you agree it is one of the  
 20 company's highest priority cash payments?  
 21 A. Yes, I do.  
 22 Q. If you would look down a couple  
 23 of paragraphs, you see the paragraph that  
 24 begins, "In the downside"?  
 25 A. Yes, I do.

1 B. Gunderman  
 2 Q. In that -- well, let me just  
 3 read that sentence into the record:  
 4 "In the downside scenario where  
 5 revenues and EBITDA continue to erode, the  
 6 higher level of fixed cost could lead to a  
 7 higher probability of default and a higher  
 8 loss, given default, given the reduction  
 9 and flexibility to reallocate cash flows  
 10 and the lower asset coverage from the  
 11 transfer of assets to PropCo."  
 12 Do you understand what Moody's  
 13 is saying in that sentence?  
 14 A. Yes, I do.  
 15 Q. And can you explain what that  
 16 sentence means, please?  
 17 A. They were indicating that in a  
 18 downside scenario, which was not defined  
 19 with any level of specificity, that a  
 20 higher level of fixed costs could lead to  
 21 a higher probability of default. And  
 22 higher loss, given default, given the  
 23 reduction in flexibility to reallocate  
 24 cash flows and the lower asset coverage,  
 25 so I do understand this statement.

1 B. Gunderman  
 2 Q. And do you agree with the  
 3 statement?  
 4 A. I understand the statement.  
 5 Q. And my question is: Do you  
 6 agree with the statement?  
 7 A. By definition, if we have much  
 8 lower revenue and EBITDA, which is not  
 9 defined here, you know, by definition, a  
 10 company with lower EBITDA is in a greater  
 11 probability to default than a company with  
 12 higher EBITDA, so I agree with that.  
 13 Q. Do you understand what is meant  
 14 by "higher level of fixed costs" in the  
 15 first line of the sentence?  
 16 A. Yes, I believe that he is  
 17 referring to the lease payment as a higher  
 18 level of fixed cost.  
 19 Q. And where he refers to at the  
 20 end of the sentence "lower asset coverage  
 21 from the transfer of assets to PropCo," do  
 22 you understand what is meant by that?  
 23 A. Yes. I believe that he's  
 24 referring to the fact that we sold assets  
 25 in the transaction, and that would go to

1 B. Gunderman  
2 his point of having fewer assets for  
3 recovery.

4 Q. And that would mean that  
5 Services and its subsidiaries have fewer  
6 assets to cover the liabilities of  
7 Services and Services' subsidiaries,  
8 correct?

9 A. That would be my understanding  
10 of his statement.

11 Q. And you agree with that?

12 A. I think by definition if there  
13 are fewer assets owned by Windstream  
14 Services, that that would be accurate.

15 Q. And do you have an understanding  
16 of what is meant by "reduction in  
17 flexibility to reallocate cash flows"?

18 A. My understanding of this  
19 statement is he is referencing the nature  
20 of the fixed payment would limit the  
21 ability to reallocate a portion of that  
22 payment.

23 Q. So just to follow-up a little  
24 bit, the fixed payment that you refer to  
25 is the payment due under the master lease,

1 B. Gunderman  
2 correct?

3 I'm referring to your last  
4 answer, when you said, "My understanding  
5 of this statement is he is referencing the  
6 nature of the fixed payment." When you  
7 said that, when you said "fixed payment,"  
8 were you referring to the payments due  
9 under the master lease?

10 A. It was. I answered that in the  
11 context of the full opinion document that  
12 I read, and so that is my understanding of  
13 what he is referencing.

14 Q. And would you agree that the  
15 fixed payment obligation in the master  
16 lease limits the flexibility of the  
17 Windstream companies to reallocate cash  
18 flows?

19 A. I don't agree with that  
20 statement in isolation, no.

21 Q. Can you explain why you don't  
22 agree with it?

23 A. I think it's a narrow  
24 interpretation of the transaction. The  
25 transaction had many other characteristics

1 B. Gunderman  
2 to it. They were not just isolated to a  
3 fixed payment.

4 Q. Would you agree that given the  
5 importance of making that payment to  
6 Uniti, that Windstream Holdings, having  
7 the obligation to make that payment,  
8 limits the flexibility to reallocate cash  
9 flows within the Windstream companies?

10 MR. MARKS: Objection to the  
11 form of the question.

12 A. I would agree that it is an  
13 obligation of Windstream Holdings, so it  
14 is an obligation that we must meet.

15 Q. Where does Windstream Holdings  
16 get the cash to pay that obligation?

17 A. Windstream Holdings, the cash  
18 flow of Windstream Holdings is an  
19 aggregation -- well, I should say the cash  
20 flows of Windstream Services is an  
21 aggregation of all cash that is generated  
22 and received from its subsidiaries.

23 And at that point, the cash  
24 payments that can leave Windstream  
25 Services are governed by all the covenants

1 B. Gunderman  
2 of our debt agreements, it's governed by  
3 restricted payment capacity and the  
4 ability to move cash out of Services.

5 And any cash that leaves  
6 Windstream Services must be delivered from  
7 Services and it's governed by the  
8 parameters in the covenants of Services.

9 Q. Services itself does not  
10 generate revenue from operations, correct?

11 A. Correct.

12 Q. Services obtains cash as a  
13 result of the operations of its  
14 subsidiaries, correct?

15 A. Correct.

16 Q. So the cash that Windstream  
17 Holdings uses to pay Uniti, that cash  
18 comes from cash generated by subsidiaries  
19 of Services, correct?

20 A. The cash, as I testified just a  
21 few seconds ago, the cash that is  
22 generated by the subsidiaries of Services  
23 is aggregated into cash accounts at  
24 Services, and under the parameters of our  
25 covenants, we are allowed to make

1 B. Gunderman

2 transfers of cash through our peak  
3 capacity out of Services to Holdings,  
4 which is how we take cash and satisfy --  
5 Holdings satisfies its obligation under  
6 the master lease with Uniti.

7 Q. And you understand that the rent  
8 obligation under the master lease is  
9 approximately \$653 million per year?

10 A. That's approximately correct.

11 Q. And the \$653 million per year  
12 that Holdings pays to Uniti comes from  
13 cash generated by subsidiaries of  
14 Services, correct?

15 A. The \$650 million a year from  
16 payment of Holdings to Uniti, cash is  
17 generated by the subsidiaries of Services.  
18 It is aggregated to the Services level.  
19 And that cash is governed by the covenants  
20 of Services. And any cash that is allowed  
21 to be part of an RP movement from Services  
22 to Holdings is governed by those  
23 parameters at Services.

24 Q. Would you agree that with  
25 respect to the cash generated by the

1 B. Gunderman

2 subsidiaries of Services, the need to pay  
3 \$653 million per year in rent to Uniti  
4 limits the flexibility of Services and its  
5 subsidiaries to allocate their cash flows?

6 A. Well, my view is that the  
7 subsidiaries of Services are express  
8 beneficiaries and use the assets that are  
9 the obligation as part of the lease from  
10 Holdings to Uniti. And as express  
11 beneficiaries in use of those assets, they  
12 use those assets to generate income and  
13 cash, which is aggregated to Windstream  
14 Services.

15 Q. Am I correct it's the transferor  
16 subsidiaries who use the leased property?

17 A. The transferor subsidiaries are  
18 express beneficiaries of the leased  
19 property under the master lease between  
20 Windstream Holdings as the obligor and  
21 tenant and Uniti.

22 Q. And do I understand you  
23 correctly that it is the transferor  
24 subsidiaries who are express beneficiaries  
25 who, in fact, use the leased property in

1 B. Gunderman

2 their business?

3 A. Yes.

4 Q. And with respect to my question  
5 about the cash flows, do I understand you  
6 correctly to be saying it is reasonable  
7 that the transferor subsidiaries who  
8 benefit from the use of the leased  
9 property should be paying the costs  
10 associated with the use of the leased  
11 property?

12 MR. MARKS: Objection to the  
13 form of the question.

14 Q. Okay. You may answer.

15 A. I think I answered that question  
16 twice already. Should I answer it again?

17 Q. Go ahead, please.

18 A. The transferor subsidiaries are  
19 express beneficiaries of the assets under  
20 the master lease between Windstream  
21 Holdings and Uniti. They use those assets  
22 in their role as express beneficiaries to  
23 generate income. That income and cash  
24 flow is aggregated and consolidated into  
25 Windstream Services, and that's the flow

1 B. Gunderman

2 of the cash.

3 MR. MARKS: Let's take a break.

4 MR. FRIEDMAN: Of course.

5 THE VIDEOGRAPHER: The time is  
6 11:22. We're going off the record.

7 (Thereupon, a recess was taken,  
8 and then the proceedings continued as  
9 follows:)

10 THE VIDEOGRAPHER: The time is  
11 11:35. We're back on record.

12 BY MR. FRIEDMAN:

13 Q. Mr. Gunderman, did you have any  
14 role in the preparation of rating agency  
15 presentations?

16 A. Can you be more specific?

17 Q. Yes. In connection with the  
18 April 2015 transaction, during the period  
19 of months or years leading up to that  
20 transaction, were you involved in the  
21 preparation of any presentations to rating  
22 agencies relating to that transaction?

23 A. Yes.

24 Q. And what was your role and  
25 responsibility with respect to such

1 B. Gunderman  
 2 presentations?  
 3 A. During much of that period I was  
 4 the treasurer, and so my responsibility as  
 5 treasurer was to be a senior level  
 6 executive who would discuss with the  
 7 rating agencies and present any number of  
 8 topics, and this would be, the REIT  
 9 transaction would have been one of those  
 10 topics.  
 11 Q. And did you play a role in  
 12 preparing written presentations that were  
 13 submitted to rating agencies?  
 14 A. I would have supervised team  
 15 members who would have done that, and I  
 16 would have had input and approved whatever  
 17 presentations we made to those  
 18 constituents.  
 19 Q. Shifting gears for a moment, is  
 20 rent paid to Uniti on a monthly basis?  
 21 A. Holdings pays rent to Uniti on  
 22 be a monthly basis, yes.  
 23 Q. And does Holdings pay the rent  
 24 by check or by wire transfer or some other  
 25 means?

1 B. Gunderman  
 2 A. Wire transfer.  
 3 Q. What is the name on the account  
 4 from which the wire is sent?  
 5 A. I don't recall the specific name  
 6 of the account, as I sit here today.  
 7 Q. Is it an account in the name of  
 8 Windstream Holdings?  
 9 A. I don't recall the name of the  
 10 account today, as I sit here.  
 11 Q. Do you have records that would  
 12 show the name on the account and the  
 13 confirmation of the wires that were sent?  
 14 A. Yes.  
 15 RQ MR. FRIEDMAN: And we would  
 16 request those records, please.  
 17 MR. MARKS: Noted.  
 18 Q. Now, do I understand your  
 19 earlier testimony correctly, that in order  
 20 for Holdings to have the cash it needed to  
 21 pay the rent, Holdings received cash from  
 22 Services?  
 23 A. Correct. It's an RP payment  
 24 from Services to Holdings.  
 25 Q. And when you say an RP payment,

1 B. Gunderman  
 2 can you explain what you mean?  
 3 A. I'm sorry. It's a restricted  
 4 payment which is a term under our  
 5 indenture. It's a covenant under our  
 6 indenture that governs the cash payments  
 7 that can be made out of our Windstream  
 8 Services entities.  
 9 Q. Is a restricted payment like a  
 10 dividend?  
 11 A. It's a cash payment.  
 12 Q. And in connection with Services  
 13 making such cash payments to Holdings, are  
 14 there resolutions of the Services board of  
 15 directors authorizing or approving such  
 16 payments?  
 17 A. Yes.  
 18 Q. And do you have copies of those  
 19 resolutions or approvals in your office?  
 20 A. I don't maintain them in my  
 21 office, but we have copies that are  
 22 maintained.  
 23 RQ MR. FRIEDMAN: We would request  
 24 copies of authorizations or approvals  
 25 by the Services board for payments of

1 B. Gunderman  
 2 cash to Holdings, please.  
 3 Q. As you were saying earlier --  
 4 withdrawn.  
 5 Services receives cash from its  
 6 subsidiaries, correct?  
 7 A. Correct.  
 8 Q. And do the subsidiaries have  
 9 their own boards of directors?  
 10 A. They do.  
 11 Q. And when the subsidiaries send  
 12 cash to Services, are there authorizations  
 13 or approvals by the boards of the  
 14 subsidiaries for sending such cash and  
 15 Services?  
 16 A. I'm not aware of the detailed  
 17 steps that occur. That is handled by our  
 18 chief legal officer or our general  
 19 counsel, so they administer the detailed,  
 20 you know, legal steps around that.  
 21 RQ MR. FRIEDMAN: If there are any  
 22 such board authorizations or approvals  
 23 on the part of the subsidiaries of  
 24 Services, we would request production  
 25 of those, please.



1 B. Gunderman  
2 (Exhibit 42, Rating Agency  
3 Presentation 2015, marked for  
4 identification, as of this date.)

5 Q. I'm going to show you a document  
6 that we marked as Exhibit 42. It is on  
7 the first page, "Rating Agency  
8 Presentation 2015." That's page 20733.

9 And my question to you,  
10 Mr. Gunderman, is: Can you identify this  
11 document, please?

12 A. I would like to have the  
13 opportunity to read the document.

14 Q. Yes.

15 A. I've reviewed the document. I  
16 haven't read every word, but I reviewed  
17 the document.

18 Q. Let me call your attention to  
19 the -- well, first, sorry. Can you  
20 identify the document, please?

21 A. The title of the document is  
22 "Rating Agency Presentation" and it simply  
23 says 2015. It's not more specific as to  
24 when it was.

25 Q. Was this a document prepared by

1 B. Gunderman  
2 you or under your supervision to provide  
3 to rating agencies?

4 A. While I don't remember the  
5 specific document. Without some  
6 indication about the context of when it  
7 was used, what I can tell you is it would  
8 be of the form and construction that would  
9 look like a presentation that we might  
10 have used to present to the rating  
11 agencies.

12 But, again, I'm just getting it  
13 for the first time today, so I don't  
14 recall the exact document.

15 Q. On the second page of the  
16 document, the heading is "Windstream  
17 Participants," and the three individuals  
18 listed under that heading are Tony Thomas,  
19 Chief Executive Officer; Bob Gunderman,  
20 CFO and Treasurer; and Mary Michaels, Vice  
21 President Capital Markets and Investor  
22 Relations.

23 Do you see that?

24 A. Yes.

25 Q. And did you, from time to time,

1 B. Gunderman  
2 participate in rating agency presentations  
3 related to the spin and leaseback  
4 transaction?

5 A. Yes. I participated in  
6 presentations to the rating agencies to  
7 describe the transaction.

8 Q. And these would be in-person  
9 meetings with the rating agencies?

10 A. My recollection is that we would  
11 have done both. We sometimes had  
12 in-person meetings and we sometimes had  
13 telephonic meetings.

14 Q. And in either case, there would  
15 often be a written presentation prepared  
16 and provided?

17 A. There would often be a written  
18 presentation provided.

19 Q. Let me call your attention,  
20 please, to page 50 of the document, which  
21 is WIN 20782. And tell me when you are on  
22 that page.

23 A. I'm on that page.

24 Q. And do you see where there's a  
25 box that has the words "Implicit

1 B. Gunderman  
2 priority"?

3 A. Yes.

4 Q. And next to that box, there's  
5 another box that says, "Continued  
6 viability of Win requires timely payment  
7 of master lease before any other payments,  
8 except requisite operating expenses."

9 Do you see that?

10 A. I do.

11 Q. Do you understand what is meant  
12 by "implicit priority"?

13 A. My understanding is that is an  
14 implied priority. It's implied that it's  
15 a priority.

16 Q. Do you understand what is meant  
17 by, "Continued viability of Win requires  
18 timely payment of master lease before any  
19 other payments, except requisite operating  
20 expenses"?

21 A. I can recall -- by reading the  
22 document, I can recall that this is a  
23 representation of the importance of the  
24 payment. It is an important payment, as I  
25 testified earlier.

1 B. Gunderman  
 2 Q. And the reference to Win in the  
 3 sentence that I just read, that is a  
 4 reference to Windstream Services and its  
 5 subsidiaries, is that correct?  
 6 A. It's not clear to me what Win is  
 7 referencing in this document.  
 8 Q. Would you agree that the  
 9 continued viability of Windstream Services  
 10 and its subsidiaries would require the  
 11 timely payment of the master lease?  
 12 A. I would agree that the -- given  
 13 the express beneficiary status of the  
 14 transferor subs, the use of those  
 15 subsidiaries using those assets of the  
 16 master lease with the obligor of  
 17 Windstream Holdings, that is how they  
 18 generate income and serve their customers.  
 19 So, by that definition I would  
 20 conclude it is an important -- it is an  
 21 important payment for Windstream Holdings  
 22 to make on behalf of its subsidiaries.  
 23 Q. Does Windstream Holdings have  
 24 any operating expenses?  
 25 A. They're minimal. I don't recall

1 B. Gunderman  
 2 the exact expenses, but they're published  
 3 in our external financial statements.  
 4 Q. And am I correct that the  
 5 subsidiaries of Services, including the  
 6 transferor subsidiaries, have substantial  
 7 operating expenses. Correct?  
 8 A. And I should correct my  
 9 statement. Windstream Holdings obviously  
 10 is an aggregation of the consolidated  
 11 results of all of Services and its  
 12 subsidiaries, and that is represented in  
 13 the financial statements in our regular  
 14 quarterly and annual reportings.  
 15 At the same time, yes, you're  
 16 correct that Windstream Services and its  
 17 subsidiaries also have results of  
 18 operations which are reflected in our  
 19 external SEC-reported financials.  
 20 Q. Just to be clear, Windstream  
 21 Holdings, on a standalone basis, has what  
 22 you described as minimal operating  
 23 expenses, correct?  
 24 A. Windstream Holdings, as the  
 25 single entity, yes. But the presentation

1 B. Gunderman  
 2 of the financials for it is an aggregated  
 3 view of all of its subsidiaries.  
 4 I'm not sure if I'm answering  
 5 your question specifically, but when we  
 6 present the results of Windstream  
 7 Holdings, there's substantial revenues and  
 8 substantial expenses that are provided in  
 9 the financial statements of Windstream  
 10 Holdings.  
 11 Q. Am I correct, and I can look for  
 12 a document but maybe you can tell me, that  
 13 in the financial reporting, the reporting  
 14 does include disclosure of Windstream  
 15 Holdings' financial results on a  
 16 standalone basis as well as on a  
 17 consolidated basis?  
 18 A. Our external reporting shows two  
 19 sets of financial statements; the  
 20 Windstream Holdings financial statements  
 21 and the Windstream Services financial  
 22 statements. Those are shown separate  
 23 within our external financials.  
 24 Q. And do you recall when we look  
 25 at the external financials, do we see

1 B. Gunderman  
 2 reporting as to Windstream Holdings on a  
 3 standalone basis, not consolidated with  
 4 the subsidiaries?  
 5 A. I would have to review our  
 6 external financial statements to conclude  
 7 on that note.  
 8 Q. Mr. Gunderman, I'm going to show  
 9 you a document previously marked as  
 10 Exhibit 58. And I'm going to ask you to  
 11 look at page 37. I will say for the  
 12 record Exhibit 58 is the 10-K for  
 13 Windstream for the year ended 2016 and I'm  
 14 showing you page 37.  
 15 A. I'm sorry, are you saying F 37  
 16 or 37?  
 17 Q. No, 37. 37.  
 18 A. Okay. I'm at that page.  
 19 Q. Is that page showing the  
 20 operating statement for Windstream  
 21 Holdings Inc. the parent company on a  
 22 standalone basis?  
 23 A. It is.  
 24 Q. And am I interpreting the  
 25 reporting correctly that the only



1 B. Gunderman  
 2 operating revenue reported by Windstream  
 3 Holdings is the leasing income from  
 4 subsidiaries?  
 5 A. That is correct.  
 6 Q. And that is \$653.6 million a  
 7 year?  
 8 A. That is what is represented for  
 9 2016.  
 10 Q. And that is the amount that  
 11 Windstream Holdings is obligated to pay in  
 12 rent to Uniti, correct, per year?  
 13 A. That is my recollection of the  
 14 amount.  
 15 Q. Now, what does this financial  
 16 statement for Windstream Holdings Inc.  
 17 tell us about operating expenses of  
 18 Windstream Holdings on a standalone basis?  
 19 A. The document shows that the  
 20 total costs and expenses are \$355.7  
 21 million for 2016, for year 2016.  
 22 Q. Of that \$355.7 million, almost  
 23 all of it, i.e. 354 million, is  
 24 depreciation expense, correct?  
 25 A. Correct.

1 B. Gunderman  
 2 don't recall what was meant, sitting here  
 3 two years removed or more from the  
 4 presentation. I can read the words and  
 5 react to the words, but I don't recall the  
 6 context of this at the time.  
 7 Q. And let me just ask you this.  
 8 Separate and apart from these documents  
 9 that we're looking at, do you consider  
 10 depreciation expense of a company to be a  
 11 payment that the company is required to  
 12 make?  
 13 A. I consider depreciation expense  
 14 to be an operating expense that is  
 15 reflected on a company's financial  
 16 statements which represents, you know, the  
 17 expense that is the result of prior  
 18 capital expenditures, which are cash flow  
 19 item, and the depreciation expense relates  
 20 to the assets that are created from the  
 21 results of those capital expenditures and  
 22 based upon various asset depreciation  
 23 schedules, you have the result, and  
 24 depreciation expense appear in the  
 25 financial statements. That's my

1 B. Gunderman  
 2 Q. And would you consider  
 3 depreciation expense to be part of  
 4 operating expenses?  
 5 A. Yes.  
 6 Q. And sort of jumping around a  
 7 little, we were looking at Exhibit 42,  
 8 page 50, do you still have that there?  
 9 A. Yes.  
 10 Q. And the word in the box that we  
 11 were looking at include -- well, let me  
 12 just say the words again: "Continued  
 13 viability of Win requires timely payment  
 14 of master lease before any other payments  
 15 except requisite operating expenses."  
 16 Do you see that?  
 17 A. I do see that.  
 18 Q. Now, would you understand the  
 19 reference to "any other payments except  
 20 requisite operating expenses," would that  
 21 include depreciation expense?  
 22 MR. MARKS: Objection to the  
 23 form.  
 24 Q. Do you understand the question?  
 25 A. I understand your question. I

1 B. Gunderman  
 2 understanding of it.  
 3 Q. Am I correct depreciation is not  
 4 cash?  
 5 A. Depreciation is not cash per se.  
 6 It is related to a cash transaction  
 7 through the construction of an asset or  
 8 the establishment of an asset that was  
 9 established through spinning of cash.  
 10 Q. But when we look at annual  
 11 financial statements and see depreciation  
 12 expense, we know that the amount of  
 13 depreciation expense does not reflect cash  
 14 expended in that year?  
 15 A. I would agree.  
 16 Q. Can I take you back for a moment  
 17 to Exhibit 46, which is the e-mail from  
 18 Mary Michaels dated 8/6/2014 with a cc to  
 19 you, Mr. Gunderman. And you previously  
 20 read earlier today the attachment, Project  
 21 RITE master question and answer document.  
 22 Do you recall that?  
 23 A. Yes, I do.  
 24 Q. I would appreciate your turning  
 25 to the last page of the exhibit, which is

1 B. Gunderman  
 2 WIN 20354?  
 3 A. 20354. Okay.  
 4 Q. And there is a question 47. Do  
 5 you see that?  
 6 A. I do.  
 7 Q. And the question reads:  
 8 "How can you ensure quality and  
 9 reliability service if two separate  
 10 entities are responsible for managing  
 11 different parts of one system?"  
 12 Do you see that question?  
 13 A. I do.  
 14 Q. And do you understand in that  
 15 question what is meant by two separate  
 16 entities?  
 17 A. Based upon the context of the  
 18 full document, my recollection is that  
 19 this would be in reference to two separate  
 20 companies.  
 21 Q. And those companies would be  
 22 Holdings and Windstream Services?  
 23 A. That would not be my  
 24 recollection.  
 25 Q. What would be your recollection?

1 B. Gunderman  
 2 referred to there?  
 3 A. My recollection is that this  
 4 would be in reference to Windstream  
 5 Holdings.  
 6 Q. And what role did Windstream  
 7 Holdings have in the day-to-day serving of  
 8 customers?  
 9 A. Well, Windstream Holdings is the  
 10 parent company of Windstream. And as the  
 11 obligors of the lease with Uniti had the  
 12 rights to using the assets and their  
 13 subsidiaries of Windstream Holdings were  
 14 express beneficiaries, and Windstream  
 15 Holdings would discharge its obligations  
 16 and use of those assets to those  
 17 subsidiaries and those subsidiaries are  
 18 the primary, they are the companies who  
 19 are in the role of serving the customers.  
 20 Q. And would you look, please, at  
 21 the last bullet point under question 47?  
 22 A. Yes.  
 23 Q. Which reads:  
 24 "Windstream will be responsible  
 25 for maintenance, capital expenditures,

1 B. Gunderman  
 2 A. If I read this, I would -- let  
 3 me reread it just one second.  
 4 Q. I think I understand, but I'm  
 5 going to let -- I'm confessing error, but  
 6 I will let you please explain what your  
 7 understanding is of two companies.  
 8 A. When I read question 47 and the  
 9 answer to question 47, I believe that the  
 10 reference to two separate entities is in  
 11 reference to Windstream Holdings and CS&L,  
 12 now Uniti.  
 13 Q. I understand that. Thank you.  
 14 And the first bullet point under  
 15 that question says:  
 16 "Windstream will retain the  
 17 day-to-day role serving all customers with  
 18 advanced network communication services.  
 19 The transition will be seamless for  
 20 customers."  
 21 Do you see that?  
 22 A. Yes I do.  
 23 Q. Where it says "Windstream" will  
 24 retain the day-to-day role, what  
 25 Windstream entity or entities is being

1 B. Gunderman  
 2 property taxes, insurance, and other  
 3 expenses."  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. And what is the Windstream  
 7 entity or entities that pays the  
 8 maintenance capital expenditures, property  
 9 taxes, insurance and other expenses on the  
 10 leased property?  
 11 A. This reference is more broadly  
 12 written. It's Windstream as the operating  
 13 companies. But the entities that actually  
 14 make the payments for these expenses are  
 15 the transferor subs primarily, which are  
 16 the express beneficiaries of these assets  
 17 that are under the lease between Holdings  
 18 and Uniti.  
 19 Q. Does Holdings serve any  
 20 customers?  
 21 A. Holdings is the parent company  
 22 of any number of subsidiaries that serves  
 23 customers.  
 24 Q. Does Holdings itself use any  
 25 leased property?

B. Gunderman

A. Holdings is the tenant of the leased property and is the primary obligor. And transferor subs are express beneficiaries of those assets. And by that definition, Windstream Holdings and its subsidiaries use the assets.

Q. Do you have records breaking down by transferor subsidiary the amount of maintenance paid on the leased property?

A. Could you ask the question again, please?

Q. Yes. Do you have records broken down by transferor subsidiary the amount of maintenance paid on the leased property?

A. We do maintain financial statements at some level for transferor subsidiaries. I would have to review the details, but we maintain separate financial statements for our transferor subsidiaries.

Q. So if we wanted to see how much any given transferor subsidiary paid for

B. Gunderman

maintenance on the leased property in a given year, there would be records that you could locate?

A. We would be able to locate records. The level of detail and the extent of that detail, as I sit here today, I would have to, you know, we would have to look for that detail. But I can tell you and stipulate today at this deposition that we do keep detailed records at the transferor subsidiary level.

Q. And those detailed records would include, for each transferor subsidiary, the amount of property taxes paid in respect of the leased property, correct?

A. I would have to review those specific financial statements to affirmatively conclude on that, but it would be my expectation that those financial statements would be reflective of the operating expenses of those transferor subsidiaries.

Q. Which would include property

B. Gunderman

taxes on the leased property, insurance paid in connection with the use of the leased property, as well as maintenance?

A. That would be my expectation, but it would have to be confirmed.

Q. And the financial records for each transferor subsidiary would also reflect the amount of capital expenditures paid by each transferor subsidiary in respect of the leased property?

A. Yes, the same level of detail that we would maintain for operating expenses we would maintain generally for capital expenditures.

Q. I'm going to show you a document previously -- not previously marked. We're marking it as Exhibit 44.

(Exhibit 44, E-mail, marked for identification, as of this date.)

BY MR. FRIEDMAN:

Q. Exhibit 44 is an e-mail from Mary Michaels to John Culver at Fitch Ratings with a cc to Bob Gunderman. Subject: Fitch follow-up questions.

B. Gunderman

Mr. Gunderman, do you have Exhibit 44?

A. I do.

Q. Is this an e-mail that you received on March 9, 2015?

A. It does appear so, yes.

Q. Can you tell me why -- what was the position of Mary Michaels at this time?

A. March 9, 2015, my recollection is Mary Michaels would have been head of investor relations and a direct report of mine at that time.

Q. And why would she be answering questions for Fitch Ratings?

A. In addition to her role of head of investor relations, she was also responsible for certain treasury management responsibilities as well. We leveraged her in the position to do other things than just investor relations. And I would have used her in that capacity to help with analysis and communications in response to rating agencies and other

1 B. Gunderman  
 2 constituents.  
 3 Q. Could I ask you to look at,  
 4 please, the third page of this exhibit,  
 5 which is WIN 20238.  
 6 A. Could I have a moment to read  
 7 this?  
 8 Q. Of course.  
 9 A. Thank you.  
 10 (Witness reading document.)  
 11 A. I've read the document.  
 12 Q. I would like to call your  
 13 attention, please, to page 3 of the  
 14 document, which is WIN 20238.  
 15 A. Okay.  
 16 Q. And there's an e-mail on that  
 17 page dated 2/28/2015, subject: Re Fitch  
 18 follow-up questions addressed to John, and  
 19 it's from Mary.  
 20 Do you see that?  
 21 A. I do see that.  
 22 Q. And Mary is Mary Michaels at  
 23 Windstream and John is John Culver at  
 24 Fitch Ratings, correct?  
 25 A. Correct.

1 B. Gunderman  
 2 Q. And you previously testified  
 3 today about how cash goes from transferor  
 4 subsidiaries to Services to Holdings to  
 5 enable Holdings to pay the rent. Do you  
 6 recall that?  
 7 A. I previously testified that the  
 8 transferor subsidiaries as express  
 9 beneficiaries of and who have use of the  
 10 assets of the master lease use those  
 11 assets to create income, that cash from  
 12 that income is aggregated up to Services,  
 13 and the ability for Services to move cash,  
 14 you know, outside of the restricted  
 15 Services group is governed by our  
 16 covenants, and one of the uses of cash  
 17 that we move from Services to Holdings is  
 18 to make a payment for the master lease  
 19 with Uniti.  
 20 Q. And in the years or  
 21 two-and-a-half years since the master  
 22 lease was signed, have the transferor  
 23 subsidiaries in fact generated enough cash  
 24 from their operations to fund the payment  
 25 of rent under the master lease?

1 B. Gunderman  
 2 Q. And one of the statements by  
 3 Mary Michaels is:  
 4 "The lease payment is  
 5 technically subordinated to the Win Corp.  
 6 debt. However, as a practical reality, it  
 7 is clearly a priority payment."  
 8 Do you see that?  
 9 A. I do.  
 10 Q. And do you agree with that  
 11 statement by Mary Michaels?  
 12 A. Well, as I testified earlier, I  
 13 agree that the lease payment at Windstream  
 14 Holdings is junior in priority to the  
 15 obligations that, what is now Windstream  
 16 Services, and I do agree that the lease  
 17 payment from Windstream Holdings to Uniti  
 18 is a priority payment given the importance  
 19 of the use of the leased assets from  
 20 Windstream Holdings and its subsidiaries.  
 21 Q. And the reference to lease  
 22 payment is a reference to the rent due  
 23 under the master lease, correct?  
 24 A. That is my understanding of the  
 25 statement.

1 B. Gunderman  
 2 A. Well, the transferor  
 3 subsidiaries by definition don't make the  
 4 payments for the master lease. The  
 5 transferor subsidiaries generate income.  
 6 That income is turned into cash, which is  
 7 aggregated into Services. That cash is  
 8 governed by our covenants within Win  
 9 Services, which we were able to send cash  
 10 from Services to Holdings, and we pay the  
 11 master lease with that cash.  
 12 Q. And the cash that has been  
 13 generated month after month by the  
 14 transferor subsidiaries has been  
 15 sufficient in amount to enable Services to  
 16 send enough cash to Holdings, for Holdings  
 17 to pay the monthly rent every month to  
 18 Uniti; is that correct?  
 19 A. I would answer it a different  
 20 way. The aggregate cash generated by  
 21 Windstream Holdings' subsidiaries in the  
 22 aggregate, which is more than just  
 23 transferor subsidiaries, has been more  
 24 than enough cash to satisfy the  
 25 obligations that Holdings has to make the



1 B. Gunderman

2 monthly payments to Uniti and has for,  
3 since the beginning of the lease.

4 Q. Do you know whether the cash  
5 generated by the transferor subsidiaries  
6 has been sufficient to -- sufficient in  
7 amount to fund the payment of the rent?

8 A. As I sit here today, that's a  
9 calculation that I have not done. I have  
10 not examined the records of our transferor  
11 subsidiaries separate and apart from the  
12 rest of our results of operations of  
13 Windstream Holdings or Services  
14 subsidiaries, and examine that from the  
15 standpoint of the question that you're  
16 asking.

17 Q. But we could look at the  
18 financial statements of the transferor  
19 subsidiaries and make the determination as  
20 to whether the cash they generated was  
21 sufficient. Correct?

22 A. You could look at the transferor  
23 subsidiaries' financial statements and  
24 determine what their cash and income was  
25 generated for whatever period. I agree

1 B. Gunderman

2 with that statement.

3 Q. Okay. And for -- you're the CFO  
4 for all the Windstream companies, correct?

5 A. Correct.

6 Q. So for purposes of the financial  
7 statements and the recordkeeping, am I  
8 correct that the amount of the lease  
9 payment due every month, every year from  
10 Holdings to Uniti, is recorded as a  
11 liability on the financial statements of  
12 the transferor subsidiaries?

13 A. The accounting of the obligation  
14 for -- which represents the obligation  
15 from a GAAP accounting standpoint on our  
16 financial statements, and I will describe  
17 what I mean by our financial statements,  
18 it is represented on multiple financial  
19 statements. The accounting that governs  
20 what we have to record is a concept called  
21 failed sale-leaseback accounting, which is  
22 a GAAP term, which, you know, at the  
23 highest level, requires us to record an  
24 obligation, a long-term lease obligation  
25 on the books of Windstream Holdings and

1 B. Gunderman

2 Services, and through accounting, as you  
3 know, our reported entities from an SEC  
4 registered standpoint, are Holdings,  
5 Services, and we do push down an  
6 allocation of that obligation for  
7 administrative ease into the transferor  
8 subsidiaries' separate books.

9 It's an accounting allocation  
10 governed by GAAP.

11 Q. And the obligation are reflected  
12 on the books of the transferor  
13 subsidiaries but not on the books of other  
14 subsidiaries, correct?

15 A. It is -- that is my  
16 recollection. It is an allocation of an  
17 obligation to the transferor subsidiaries'  
18 books.

19 (Exhibit 45, 4/12/15 e-mail and  
20 attachments, Bates stamped WIN 20411  
21 through WIN 20112; WIN 20420 through  
22 WIN 20427, marked for identification,  
23 as of this date.)

24 Q. I'm going to show you a document  
25 we are marking as Exhibit 45. It is an

1 B. Gunderman

2 e-mail from Bob Gunderman to Tony Thomas,  
3 April 12, 2015. Page number WIN 20411  
4 through WIN 20427.

5 A. Can I take a moment to read the  
6 document?

7 Q. Yes, of course, because my first  
8 question will be can you identify this  
9 document?

10 A. I recognize the e-mail as being  
11 from me to Tony Thomas. I don't recall  
12 the specific e-mail, but I'd be happy to  
13 read it.

14 Q. Oh, and again, I just have to  
15 correct what I said about the page  
16 numbers. This is a cover e-mail with  
17 multiple attachments. Pages WIN 20411  
18 through WIN 20412 are the cover e-mail.  
19 All the attachments are not here. The  
20 attachment that is here is WIN 20420  
21 through 20426 -- 20427, I apologize.

22 (Witness reading document.)

23 A. I familiarized myself with the  
24 document without reading every word.

25 Q. Thank you. And this is an

1 B. Gunderman  
 2 e-mail that you sent to Tony Thomas on  
 3 April 12, 2015 with attachments, correct?  
 4 A. Correct.  
 5 Q. And the attachment that is part  
 6 of the exhibit is what is referred to as  
 7 the QA for lender trip; is that correct?  
 8 A. Yes.  
 9 Q. I'm looking at the description  
 10 on the first page after the word  
 11 "Attachments." You see where it says, "QA  
 12 for lender trip"?  
 13 A. Yes, I do.  
 14 Q. And starting with the third page  
 15 of the exhibit, which is page 20420, is  
 16 that the QA for lender trip?  
 17 A. That is my recollection after  
 18 having read this.  
 19 Q. Can you tell us, please, what  
 20 your role was in preparing the QA for  
 21 lender trip?  
 22 A. Well, in April of, I guess, 2015  
 23 I would have been the chief financial  
 24 officer and treasurer of Windstream as  
 25 noted in the e-mail, and I would have had

1 B. Gunderman  
 2 responsibility for overseeing as the CFO  
 3 and treasurer any number of preparedness  
 4 on communications that would come up as  
 5 part of the financing process and the  
 6 capitalization of CS&L.  
 7 And as I read through this  
 8 document, it would appear that is what  
 9 this document is meant to be.  
 10 Q. Could you tell us what is meant  
 11 by "lender trip"?  
 12 A. Well, without being refreshed on  
 13 the calendar, what it would seem to mean  
 14 to me is that it would be a trip where we  
 15 were going to raise capital.  
 16 And again, without knowing the  
 17 exact timeline, I hadn't refreshed on all  
 18 the exact timeline of the events around  
 19 the transaction before this deposition,  
 20 but that is what it would mean to me.  
 21 Q. Could you look, please, at the  
 22 first page of the Q and A, and I would  
 23 like to call your attention to item B, I  
 24 guess it's 1B, and tell me when you see  
 25 it.

1 B. Gunderman  
 2 A. 1B on 20420?  
 3 Q. Correct.  
 4 A. Yes, I see it.  
 5 Q. So the word after the letter B  
 6 reads:  
 7 "Lease structure well-designed  
 8 and ironclad."  
 9 Do you know what is meant by  
 10 "ironclad" in this context?  
 11 A. As I review this now, two-plus  
 12 years removed, I don't recall exactly what  
 13 we were thinking when we wrote those  
 14 words, or whoever wrote the words.  
 15 Q. Do you recall that one of the  
 16 considerations in structuring this  
 17 transaction had to do with bankruptcy  
 18 considerations?  
 19 A. I recall that one of the  
 20 considerations was that we wanted to be  
 21 prepared to speak to anyone's questions  
 22 about the remote chance that might occur.  
 23 So yes, I recall having some discussion  
 24 about that.  
 25 Q. Was the lease structured so that

1 B. Gunderman  
 2 even in a bankruptcy process the  
 3 transferor subsidiaries would be able to  
 4 continue using the properties?  
 5 MR. MARKS: Objection.  
 6 Foundation.  
 7 A. I couldn't speculate on the  
 8 construction of the master lease, and as I  
 9 sit here today, I wouldn't be prepared to  
 10 comment on that.  
 11 Q. Do you have an understanding as  
 12 to what is meant by the reference to the  
 13 lease being "impossible to reject" in a  
 14 bankruptcy?  
 15 A. As I sit here today and read  
 16 that, I don't have a recollection of what  
 17 we were thinking at the time but there are  
 18 the words on the page.  
 19 Q. Would you look down to item C on  
 20 page 20420?  
 21 A. Yes.  
 22 Q. And item C begins with the  
 23 words, "What if Win can't afford to make  
 24 the lease payment i.e. default on lease"?  
 25 Do you see that?



1 B. Gunderman  
 2 A. I do see that.  
 3 Q. And the first bullet point is:  
 4 "This is very unlikely, as a  
 5 default on the lease would likely lead to  
 6 bankruptcy process given the cross default  
 7 on Win's credit documents highlighting the  
 8 importance of the lease payment to Win  
 9 Services (OpCo)."  
 10 Do you understand what that  
 11 sentence is telling us?  
 12 A. I understand the sentence. As  
 13 part of the preparation for this  
 14 deposition, and routinely, I'm not  
 15 reviewing our documents with the context  
 16 of trying to understand this remote  
 17 scenario, but I do understand the words.  
 18 Q. And is this something you  
 19 reviewed in preparation for this  
 20 deposition?  
 21 A. I did not -- I don't recall this  
 22 particular document. Is that your  
 23 question?  
 24 Q. That was my question.  
 25 A. I don't recall reviewing this

1 B. Gunderman  
 2 particular document.  
 3 Q. Do you have an understanding as  
 4 to how a default on the master lease could  
 5 lead to a bankruptcy process?  
 6 A. I did not review those  
 7 provisions as part of the master lease in  
 8 preparation for this deposition, and I  
 9 don't recall what, if any, provisions are  
 10 in the master lease with regards to that  
 11 topic.  
 12 Q. Would you turn, please, to page  
 13 20422?  
 14 A. Yes.  
 15 Q. Under item 2, "Master lease  
 16 relationship with Win," there is a Section  
 17 B, do you see that?  
 18 A. Yes.  
 19 Q. Let me just read Section B:  
 20 "What type of protections do we  
 21 have as a debt investor under the master  
 22 lease agreement?"  
 23 Do you see that?  
 24 A. I do.  
 25 Q. And what is the meaning of the

1 B. Gunderman  
 2 reference to "debt investor"?  
 3 A. Well, as I read this today, more  
 4 than two years removed, what that seems to  
 5 infer is either a loan or a bond investor  
 6 of Windstream.  
 7 Q. And item B continues with the  
 8 sentence:  
 9 "What is the priority of the  
 10 master lease payments at Win as compared  
 11 to other obligations at Win interest  
 12 expense cap X dividends?"  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. And there are two bullet points  
 16 below that in answer to the question. Do  
 17 you see that?  
 18 A. Yes.  
 19 Q. And those two bullet points, I  
 20 will read them one at a time. First:  
 21 "Since the Win Holdings is the  
 22 obligor on the lease, there is a technical  
 23 subordination for the lease payment but  
 24 there is practical seniority as the  
 25 payment must be made for Win OpCo to have

1 B. Gunderman  
 2 a business and to continue to generate  
 3 cash flows."  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. Do you agree with that  
 7 statement?  
 8 A. I agree with the comment that  
 9 because the Win Holdings is the obligor of  
 10 the lease, there is a technical  
 11 subordination for the lease payment in  
 12 reference to, you know, the restrictions  
 13 that we have at Windstream Services.  
 14 I do agree that there is a  
 15 priority in terms of this payment. It is  
 16 an important payment of the company in  
 17 order to have access to assets, which are  
 18 used to generate cash flows in the  
 19 business.  
 20 Q. Question, you would agree that  
 21 as to the lease payments there is a  
 22 practical seniority, as stated in this  
 23 bullet point?  
 24 A. I would agree it's an important  
 25 payment, and I don't know that I would --

<p style="text-align: right;">Page 102</p> <p>1 B. Gunderman</p> <p>2 as I sit here today and read this in just</p> <p>3 one moment, I would not conclude about the</p> <p>4 language of practical seniority. I would</p> <p>5 have to think more about that. My</p> <p>6 testimony is I do agree it is an important</p> <p>7 payment that is important to Windstream</p> <p>8 being able to generate cash flows in the</p> <p>9 business.</p> <p>10 Q. And important to the Windstream</p> <p>11 transferor subsidiaries being able to</p> <p>12 generate cash flows?</p> <p>13 A. Important to Windstream</p> <p>14 Holdings, Windstream Services and</p> <p>15 Windstream's transferor subsidiaries and</p> <p>16 the rest of our subsidiaries.</p> <p>17 Q. Mr. Gunderman, in your answer a</p> <p>18 moment ago, you said one thing I wasn't</p> <p>19 entirely following. You noted that</p> <p>20 Windstream Holdings is the obligor of the</p> <p>21 lease, and then you said something like,</p> <p>22 as I heard it, there is a technical</p> <p>23 subordination for the lease payment in</p> <p>24 reference to the restrictions that we have</p> <p>25 at Windstream Services, and I just want to</p>	<p style="text-align: right;">Page 103</p> <p>1 B. Gunderman</p> <p>2 understand what you meant when you were</p> <p>3 referring to the restrictions that we have</p> <p>4 at Windstream Services?</p> <p>5 A. What I was referring to was</p> <p>6 Windstream Services is where our debt</p> <p>7 obligations and many of our material</p> <p>8 obligations more generally reside. And</p> <p>9 the fact that Windstream Holdings is the</p> <p>10 obligor of the lease payment, which is</p> <p>11 outside of the Windstream Services</p> <p>12 restricted group, in my judgment, that is</p> <p>13 an indication of a technical subordination</p> <p>14 of that payment.</p> <p>15 Q. Since the inception of the</p> <p>16 master lease, am I correct that there have</p> <p>17 been restricted payments from Services to</p> <p>18 Holding sufficient in amount to fund the</p> <p>19 payments of rent under the master lease?</p> <p>20 A. Yes.</p> <p>21 Q. And is there any expectation</p> <p>22 that Services will stop making those</p> <p>23 restricted payments at any point in time?</p> <p>24 MR. MARKS: Objection to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 104</p> <p>1 B. Gunderman</p> <p>2 A. There is no expectations in my</p> <p>3 mind about that.</p> <p>4 MR. FRIEDMAN: Why don't we take</p> <p>5 a break for lunch at this point and</p> <p>6 then resume.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 12:41, and we are going off the</p> <p>9 record.</p> <p>10 (Luncheon recess taken at 12:41</p> <p>11 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 105</p> <p>1 B. Gunderman</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:25 p.m.)</p> <p>4</p> <p>5 THE VIDEOGRAPHER: The time is</p> <p>6 1:25. We're back on the record.</p> <p>7 BY MR. FRIEDMAN:</p> <p>8 Q. Good afternoon, Mr. Gunderman.</p> <p>9 MR. FRIEDMAN: I will ask the</p> <p>10 court reporter to mark as Exhibit 80 a</p> <p>11 two-page document.</p> <p>12 And I said two pages. It's four</p> <p>13 pages. Exhibit 80 is WIN 14960</p> <p>14 through WIN 14963. At the top of the</p> <p>15 first page, the document is entitled</p> <p>16 "Windstream Services, LLC Officers'</p> <p>17 Certificate."</p> <p>18 (Exhibit 80, Windstream</p> <p>19 Services, LLC Officers' Certificate,</p> <p>20 Bates stamped WIN 14960 through WIN</p> <p>21 14963, marked for identification, as</p> <p>22 of this date.)</p> <p>23 Q. My question for you,</p> <p>24 Mr. Gunderman, is: Can you identify this</p> <p>25 document?</p>

1 B. Gunderman

2 A. One moment. Yes. This is an  
3 officer's certificate which is required  
4 for when we make a restricted payment from  
5 Services to Holdings. And this is dated  
6 December 7, 2015. Signed by me as CFO and  
7 Christie Grumbos, our treasurer.

8 Q. So that's your signature right  
9 above your name, Robert E. Gunderman; is  
10 that correct?

11 A. Yes.

12 Q. And the certificate reflects a  
13 -- withdrawn.

14 The certificate reflects a  
15 dividend payment being made by Windstream  
16 Services to Windstream Holdings, correct?

17 A. Yes.

18 Q. And the amount of the payment  
19 from Windstream Services to Windstream  
20 Holdings is \$54,166,666.67; is that  
21 correct?

22 A. Yes.

23 Q. And that amount is the amount of  
24 monthly rent to be paid under the master  
25 lease at the point in time the certificate

1 B. Gunderman

2 was signed; is that correct?

3 A. Yes.

4 Q. And am I correct that  
5 certificates like this are signed on a  
6 monthly basis?

7 A. Yes.

8 Q. Are you the one who has been  
9 signing the officer's certificates since  
10 the inception of the master lease?

11 A. I don't know if I've signed  
12 every one, but it wouldn't surprised me if  
13 I signed most, if not all of them, as CFO  
14 and treasurer.

15 Q. For each officer's certificate,  
16 the amount corresponds to the amount of  
17 monthly rent that is due to be paid under  
18 the master lease, correct?

19 A. Well this document corresponds  
20 to that amount.

21 Q. And do you know whether  
22 generally there is an officer's  
23 certificate for each payment of monthly  
24 rent that is required under the master  
25 lease?

1 B. Gunderman

2 A. Yes.

3 Q. So if we go back, we should find  
4 in the records for each monthly payment of  
5 rent due under the master lease an  
6 officer's certificate relating to a  
7 restricted payment for that amount,  
8 correct?

9 A. Yes.

10 Q. And can you confirm, please,  
11 that the officer's certificate that you  
12 signed and delivered to the trustee is  
13 accurate and complete, to the best of your  
14 knowledge?

15 A. It is accurate and complete, to  
16 the best of my knowledge.

17 Q. And that includes the words and  
18 the financial data, correct?

19 A. Correct.

20 Q. And footnote 9 on page WIN 14962  
21 has a reference to fair market value of  
22 property plant and equipment transferred 7  
23 billion 450 million -- I'm not reading the  
24 whole footnote. I read part of it. Do  
25 you see what I read?

1 B. Gunderman

2 A. I do see the footnote 9, yes.

3 Q. I should have asked the  
4 questions in this order.

5 FMV is fair market value; is  
6 that correct?

7 A. That is my understanding.

8 Q. PP&E is property, plant and  
9 equipment, correct?

10 A. Yes.

11 Q. The reference to PP&E  
12 transferred is a reference to the property  
13 transferred by the transferor subs to CS&L  
14 in the April 2015 transaction, correct?

15 A. That's my recollection.

16 Q. And that is the property that,  
17 as owned by CS&L or Uniti, is the leased  
18 property, correct?

19 A. That is my recollection, yes.

20 Q. And the fair market value of the  
21 property transferred on April 24, 2015 was  
22 \$7 billion 450 million; is that correct?

23 MR. MARKS: Objection to the  
24 form of the question.

25 A. No. As referenced in the

<p style="text-align: right;">Page 110</p> <p>1 B. Gunderman</p> <p>2 footnote, the fair market value is</p> <p>3 represented as a reduction of, or as an RP</p> <p>4 payment here, is actually calculated as</p> <p>5 the fair market value of the PP&amp;E</p> <p>6 transferred of 7.45 billion, less net debt</p> <p>7 proceeds of 3.550 billion.</p> <p>8 Q. Well, maybe my question was not</p> <p>9 clear. Let's look at the number up above</p> <p>10 where footnote 9 is attached.</p> <p>11 Do you see the number in parens</p> <p>12 3 billion 900 million?</p> <p>13 A. Yes.</p> <p>14 Q. And what is that number telling</p> <p>15 us?</p> <p>16 A. That number, as indicated by the</p> <p>17 description, is a spinoff restricted</p> <p>18 payment on 4/24. It is a deduction from</p> <p>19 our restricted payments basket which is a</p> <p>20 calculation under our indentures, and it</p> <p>21 shows a deduction of restricted payments</p> <p>22 that is reflective of the outflow related</p> <p>23 to the Uniti spin transaction.</p> <p>24 Q. And do I understand you</p> <p>25 correctly that 3 billion 900 million was</p>	<p style="text-align: right;">Page 111</p> <p>1 B. Gunderman</p> <p>2 the amount of a restricted payment by</p> <p>3 Services to Holdings on April 24, 2015?</p> <p>4 A. Yes.</p> <p>5 Q. And is my arithmetic correct</p> <p>6 that 3 billion 900 million results from</p> <p>7 subtracting 3 billion 550 million from 7</p> <p>8 billion 450 million?</p> <p>9 A. Yes.</p> <p>10 Q. And can you explain to me why</p> <p>11 that subtraction is being done?</p> <p>12 A. That is the determination of the</p> <p>13 restricted payment calculation.</p> <p>14 Q. Can you elaborate, how is that</p> <p>15 the determination of the restricted</p> <p>16 payment calculation?</p> <p>17 A. As I sit here today, two</p> <p>18 years-plus removed from the transaction, I</p> <p>19 don't recall the exact details of the</p> <p>20 calculation.</p> <p>21 But when I read it on the page,</p> <p>22 that is what it represents to me.</p> <p>23 Q. Now, you said something a little</p> <p>24 while ago where maybe I misunderstood or</p> <p>25 maybe you misspoke, so I would like to be</p>
<p style="text-align: right;">Page 112</p> <p>1 B. Gunderman</p> <p>2 clear.</p> <p>3 Can you tell me, what is the</p> <p>4 fair market value of the property that was</p> <p>5 transferred by the transferor subsidiaries</p> <p>6 to CS&amp;L?</p> <p>7 MR. MARKS: Objection to the</p> <p>8 form.</p> <p>9 Q. Do you understand the question?</p> <p>10 A. As represented on this document?</p> <p>11 Q. Yes.</p> <p>12 A. The fair market value of the</p> <p>13 property, plant and equipment transferred</p> <p>14 is represented at .45 billion.</p> <p>15 Q. And just to be clear, this is</p> <p>16 where I might have misheard or you might</p> <p>17 have misspoke. You are not saying that</p> <p>18 the fair market value was 7.45 billion</p> <p>19 minus 3 billion 550 million?</p> <p>20 MR. MARKS: Objection to the</p> <p>21 form.</p> <p>22 Q. Could you answer that?</p> <p>23 A. I'm saying for calculations on</p> <p>24 the RP capacity, the deduction related to</p> <p>25 the RP payment for this restricted payment</p>	<p style="text-align: right;">Page 113</p> <p>1 B. Gunderman</p> <p>2 is calculated as 7.45 billion, less the</p> <p>3 net debt proceeds received in the</p> <p>4 transaction of 3.55 billion. That is my</p> <p>5 testimony.</p> <p>6 Q. I'm afraid I'm not communicating</p> <p>7 as clearly as I would like to. I may have</p> <p>8 been mistaken. I thought you said</p> <p>9 something like the fair market value of</p> <p>10 the property transferred would be 7.45</p> <p>11 billion minus 3 billion 550 million.</p> <p>12 Was that your testimony?</p> <p>13 A. My testimony was is the 3.9</p> <p>14 billion, which is represented as the</p> <p>15 reduction of our restricted payment</p> <p>16 related to the spin-off transaction, it's</p> <p>17 calculated by the calculation of the fair</p> <p>18 market value of the PP&amp;E transferred of</p> <p>19 7.45 billion, less the net debt proceeds</p> <p>20 of 3.55 billion.</p> <p>21 Q. Do you know how the fair market</p> <p>22 value of 7.45 billion was determined?</p> <p>23 MR. MARKS: Objection to the</p> <p>24 form.</p> <p>25 A. It's been some time since we</p>

1 B. Gunderman  
 2 went through this. I didn't refresh  
 3 before this deposition, but generally we  
 4 retained an expert advisor to help us with  
 5 the valuation analysis for the  
 6 transaction. And this was the  
 7 determination that we arrived at as the  
 8 representation of the fair market value of  
 9 those assets transferred on advice of  
 10 those advisors.  
 11 Q. Was that advisor Ernst & Young?  
 12 A. Yes.  
 13 Q. And Ernst & Young arrived at  
 14 7.45 billion as the fair market value of  
 15 the property being transferred?  
 16 A. They had a range valuation, and  
 17 through our discussions of their analysis,  
 18 we concluded that was the valuation for  
 19 this transaction RP payment.  
 20 Q. You concluded that the fair  
 21 market value of the property being  
 22 transferred was 7 billion 450 million?  
 23 A. As required under the RP  
 24 payment, yes.  
 25 Q. What does the RP payment have to

1 B. Gunderman  
 2 do with the determination of the fair  
 3 market value of the assets?  
 4 A. Again, two-plus years removed,  
 5 my recollection is that was our  
 6 determination under the indenture as to  
 7 what we were required to reflect as a  
 8 restricted payment for the value  
 9 transferred of the assets.  
 10 Q. And was it necessary to have the  
 11 fair market value of the property  
 12 transferred determined for any purpose  
 13 other than calculating restricted  
 14 payments?  
 15 A. Yes.  
 16 Q. What other purposes?  
 17 A. We also used the valuation  
 18 analysis to conclude that the lease  
 19 transaction, that the lease payment that  
 20 was established between Windstream  
 21 Holdings and Uniti was fair market value  
 22 and an arm's length transaction and that  
 23 was another purpose.  
 24 Q. And in using fair market value  
 25 for that purpose, the fair market value

1 B. Gunderman  
 2 determination that was used was the fair  
 3 market value of 7.45 billion, correct?  
 4 A. Yes.  
 5 Q. I'm going to show you a  
 6 document that was previously marked  
 7 yesterday as Exhibit 38. I'm showing you  
 8 Exhibit 38. You've read it before?  
 9 Mr. Gunderman, my question for  
 10 you is -- well, let me back up before I  
 11 ask you specifically about the document.  
 12 You recall that in connection  
 13 with the transferor subsidiaries' transfer  
 14 of assets to CS&L, there were proceedings  
 15 commenced by Windstream companies before  
 16 various state regulatory authorities?  
 17 A. Yes.  
 18 Q. Can you tell us, please,  
 19 generally what your role was in connection  
 20 with those regulatory proceedings?  
 21 A. My role was to be part of the  
 22 Kentucky proceeding. I was asked to  
 23 participate in the proceeding. My topics  
 24 of emphasis for my participation were  
 25 around the financial benefits of the

1 B. Gunderman  
 2 transaction, the financial structuring of  
 3 the transaction, the accounting of the  
 4 transaction. Those were generally the  
 5 components that I was brought forth to  
 6 speak to.  
 7 Q. And do I understand you  
 8 correctly that you had the role you  
 9 described in the Kentucky proceeding but  
 10 not in proceedings in other states?  
 11 A. I don't recall any other state  
 12 testimony. I certainly didn't participate  
 13 in that. I know those deliberations and  
 14 filings and responses were supervised by  
 15 our legal team, and that was not under my  
 16 supervision.  
 17 Q. And you do have a recollection  
 18 of testifying in the Kentucky proceeding?  
 19 A. I do at a high level. It's been  
 20 some time.  
 21 Q. Okay. So Exhibit 38 is a cover  
 22 letter with a transcript attached. The  
 23 cover letter refers to a transcript of a  
 24 November 13, 2014 hearing. And the  
 25 transcript on page 2, which is WIN 3682,



<p style="text-align: right;">Page 118</p> <p>1 B. Gunderman  2 reflects that the transcript includes  3 testimony of Robert E. Gunderman, starting  4 on page 9 and going to about page 145.  5 And I would at this time simply  6 ask you to look at this. I'm not asking  7 you to read all of it. Does this document  8 appear to be a transcript of the testimony  9 that you provided in the Kentucky  10 proceeding?  11 A. Without reading the entire  12 document, it does appear to be based upon  13 the title and description that you've  14 described. That is the document as  15 presented.  16 Q. I would like to call your  17 attention, please, to page 26.  18 A. 26 of the document or --  19 Q. Yes, 26 of the transcript.  20 A. Okay.  21 Q. Which is WIN 3706.  22 A. Okay.  23 Q. And tell me when you're there,  24 please.  25 A. I'm there.</p>	<p style="text-align: right;">Page 119</p> <p>1 B. Gunderman  2 Q. And there is a question on line  3 13, and then an answer on line 17 that's  4 interruptive a little on line 22, and then  5 the answer continues onto through line 25.  6 Do you see that?  7 A. I do. I can read that.  8 Q. I'm going to read that much into  9 the record.  10 A. Okay.  11 Q. The question starting at line 13  12 is:  13 "And believe me, that's all I  14 know is the name on the chart. So, now,  15 will there be an agreement between the  16 Kentucky ILECs and that CSL Kentucky  17 subsidiary.  18 "Answer: The agreement will be  19 between CS&amp;L at the corporate entity level  20 as well as Windstream Holdings, Inc., and  21 it's just for administrative ease in terms  22 of transacting -- transacting the lease  23 between the entities -- "  24 And then the question is:  25 "Okay. I --"</p>
<p style="text-align: right;">Page 120</p> <p>1 B. Gunderman  2 And then you continue:  3 "For the benefit of the  4 operating subsidiaries of Windstream to  5 include Kentucky East and Kentucky West."  6 Do you see the portion of the  7 transcript I just read?  8 A. Yes.  9 Q. And that is testimony that you  10 provided, a portion of the testimony you  11 provided in the Kentucky proceeding,  12 correct?  13 A. Yes.  14 Q. And is the answer you gave  15 truthful?  16 A. Well, as I reflect upon the  17 testimony, I certainly believe I could  18 have been more clear in my answer, but as  19 a reminder, when I gave the testimony, I  20 was primarily engaged to speak to the  21 financial benefits, the financial  22 structuring of the transaction and the  23 accounting of the transaction.  24 When I made the answer to the  25 gentleman's question, I believe I</p>	<p style="text-align: right;">Page 121</p> <p>1 B. Gunderman  2 oversimplified a couple of terms in my  3 answer, which was somewhat confusing. As  4 I was reviewing this testimony today  5 versus then, what I recall referring to  6 here was that the lease was between  7 Windstream Holdings and CS&amp;L. And because  8 the transferor subsidiaries were express  9 beneficiaries of the lease, with Holdings  10 being the obligor, I was simply referring  11 to what was mentioned as part of the  12 preparation for this testimony, which was  13 the administrative ease in terms of  14 transacting, I was confusing a concept  15 called the retained title concept, which  16 for me meant, because of the  17 administrative burden of having  18 potentially to go through and retitle  19 thousands and thousands of assets that  20 would be transferred as part of this  21 original transaction, through the  22 administrative ease, which was the point  23 that I was confusing and referring to, we  24 were simply going to transact at the  25 Holdings level and the express</p>



1 B. Gunderman  
2 beneficiaries' benefits for the transfer  
3 of subs was the concept I was confusing.  
4 I could have been more clear within this  
5 testimony.

6 Q. You referred in your answer to  
7 the preparation for this testimony.  
8 Correct?

9 A. For the testimony with Kentucky.

10 Q. Yes. And with whom did you  
11 speak in preparing to provide the Kentucky  
12 testimony?

13 A. Well, I forget the name of the  
14 law firm. It may be on the cover here  
15 that advised us at the time. I don't  
16 remember the firm or the name and didn't  
17 try to prepare for that in advance of this  
18 deposition.

19 I do recall that John Fletcher,  
20 who is our general counsel at the time and  
21 myself, were the two executives who gave  
22 the testimony, and so I'm quite confident  
23 he and I would have talked about --

24 MR. MARKS: You don't have to  
25 say what you and he talked about.

1 B. Gunderman

2 A. I will leave it at that.

3 Q. In your last answer, you told me  
4 part of what had been explained to you in  
5 the preparation, correct?

6 A. I would have heard concepts  
7 identified. And quite frankly, I confused  
8 the concepts as part of my testimony.  
9 Made that less clear with the way I  
10 testified to it.

11 Q. My question was, you heard  
12 concepts explained to you in the process  
13 of your preparing for the Kentucky  
14 testimony, correct?

15 A. That's my recollection two or  
16 three years removed.

17 Q. Okay.

18 And is it your best recollection  
19 that the concepts you were describing were  
20 explained to you by a lawyer?

21 A. I don't recall who explained it  
22 to me. I just know generally at the time  
23 I recall hearing the concepts.

24 Q. Other than the concept that you  
25 explained in your answer just now, is

1 B. Gunderman  
2 there anything else that you recall that  
3 was explained to you in preparation for  
4 your Kentucky testimony?

5 MR. MARKS: I want to caution  
6 the witness that's a yes/no question,  
7 and before you start to go into what's  
8 possibly attorney-client privileged  
9 information.

10 Can you read back the question?

11 Q. The question was: Other than  
12 the concept that you explained in your  
13 answer just now, is there anything else  
14 that you recall that was explained to you  
15 in preparation for your Kentucky  
16 testimony?

17 A. No.

18 Q. So as you sit here today, the  
19 one thing you remember in your preparation  
20 for the Kentucky testimony is that someone  
21 explained to you administrative ease with  
22 reference to retained title. Is that  
23 correct?

24 A. Perhaps you will have to expand  
25 on your question. I thought you were

1 B. Gunderman

2 simply asking about that particular  
3 clause.

4 Q. No.

5 A. Okay.

6 Q. I'm going to ask my question  
7 again.

8 A. Okay.

9 Q. Let's step back. You told me a  
10 few minutes ago something that you  
11 remembered hearing in connection with your  
12 preparation for the Kentucky testimony,  
13 correct?

14 A. Yes.

15 Q. And my question is: In addition  
16 to what you have described, do you  
17 remember hearing anything else in  
18 connection with your preparation for the  
19 Kentucky testimony?

20 MR. MARKS: He's answered that  
21 question no.

22 MR. FRIEDMAN: There was some  
23 confusion expressed by the witness. I  
24 would like an answer to my question.

25 A. I will stick with my prior

<p style="text-align: right;">Page 126</p> <p>1 B. Gunderman</p> <p>2 answer of no.</p> <p>3 Q. So to be clear, with respect to</p> <p>4 any and all preparation you engaged in for</p> <p>5 your Kentucky testimony, the only thing</p> <p>6 you remember is that someone explained the</p> <p>7 concept of retained title and how that was</p> <p>8 being handled for administrative ease, and</p> <p>9 there is nothing else you remember hearing</p> <p>10 in connection with your preparation for</p> <p>11 the Kentucky testimony, correct?</p> <p>12 MR. MARKS: Objection to form.</p> <p>13 You can answer.</p> <p>14 A. I don't know how you separate</p> <p>15 the question of preparations. My</p> <p>16 assimilation of information over periods</p> <p>17 of time that prepared me for the testimony</p> <p>18 was an assimilation of information in</p> <p>19 dialogues that I had from the construction</p> <p>20 of the transaction, and that's what</p> <p>21 prepared me for the testimony.</p> <p>22 I don't remember anything</p> <p>23 specific other than what I'm testifying</p> <p>24 here to today about the particular topic</p> <p>25 that you just asked about and the retained</p>	<p style="text-align: right;">Page 127</p> <p>1 B. Gunderman</p> <p>2 title.</p> <p>3 Q. You referred to your preparation</p> <p>4 for the Kentucky testimony; is that</p> <p>5 correct?</p> <p>6 A. I did.</p> <p>7 Q. Did that preparation occur in an</p> <p>8 in-person meeting?</p> <p>9 A. I don't recall how the</p> <p>10 preparations occurred. It's been too</p> <p>11 long.</p> <p>12 Q. Do you recall any of the names</p> <p>13 of the people who were present in</p> <p>14 connection with preparing for your</p> <p>15 Kentucky testimony?</p> <p>16 A. I don't.</p> <p>17 Q. Do you recall how much time you</p> <p>18 spent preparing for your Kentucky</p> <p>19 testimony?</p> <p>20 A. I don't.</p> <p>21 Q. Do I understand you correctly,</p> <p>22 in your preparation for the Kentucky</p> <p>23 testimony you recall hearing about</p> <p>24 retained title?</p> <p>25 A. As I said earlier, up to the</p>
<p style="text-align: right;">Page 128</p> <p>1 B. Gunderman</p> <p>2 time where I was prepared to give the</p> <p>3 testimony in the Kentucky, I recall</p> <p>4 hearing about that concept.</p> <p>5 So how you define the</p> <p>6 preparations for the testimony is</p> <p>7 ambiguous to me as to how you're defining</p> <p>8 that.</p> <p>9 Q. You, Mr. Gunderman, referred to</p> <p>10 something you heard in your preparation</p> <p>11 for the Kentucky testimony. I'm trying to</p> <p>12 understand what you meant when you said</p> <p>13 you heard something in connection with</p> <p>14 your preparation for the Kentucky</p> <p>15 testimony.</p> <p>16 Could you explain, please, what</p> <p>17 you meant?</p> <p>18 MR. MARKS: Objection. Asked</p> <p>19 and answered.</p> <p>20 Q. You may answer.</p> <p>21 A. I've answered it.</p> <p>22 Q. Well, I would like an answer to</p> <p>23 the question, please.</p> <p>24 A. I answered it earlier, which is</p> <p>25 to say I had over time assimilated</p>	<p style="text-align: right;">Page 129</p> <p>1 B. Gunderman</p> <p>2 information around my understanding of the</p> <p>3 transaction, and through that time I heard</p> <p>4 mention of the retained title concept and</p> <p>5 I confused those issues as part of my</p> <p>6 testimony and that's my answer.</p> <p>7 Q. Is your testimony now that at</p> <p>8 some point prior to the Kentucky testimony</p> <p>9 you heard about retained title?</p> <p>10 A. That is my recollection.</p> <p>11 Q. Do you have a recollection of</p> <p>12 hearing about retained title in connection</p> <p>13 with your preparation for the Kentucky</p> <p>14 testimony?</p> <p>15 MR. MARKS: Asked and answered</p> <p>16 four times.</p> <p>17 MR. FRIEDMAN: No, it hasn't.</p> <p>18 A. Can you define it?</p> <p>19 Q. Mr. Gunderman, I will be happy</p> <p>20 to define it, and if it's my</p> <p>21 misunderstanding, you'll tell me.</p> <p>22 I understood from your testimony</p> <p>23 that prior to your Kentucky testimony, you</p> <p>24 engaged in some preparation or meeting, as</p> <p>25 people often do when they're going to</p>

<p style="text-align: right;">Page 130</p> <p>1 B. Gunderman</p> <p>2 testify. Did I misunderstand that?</p> <p>3 MR. MARKS: Objection to the</p> <p>4 form of the question.</p> <p>5 Q. You may answer.</p> <p>6 A. I don't recall every step of the</p> <p>7 way of everything that I did to prepare,</p> <p>8 but I do recall that leading up to the</p> <p>9 Kentucky testimony, I would have</p> <p>10 assimilated information over time that</p> <p>11 prepared me for the discussion.</p> <p>12 Q. When you say "over time," do you</p> <p>13 mean over a period of months and years</p> <p>14 before you testified?</p> <p>15 A. My understanding of the</p> <p>16 transaction prepared me for the testimony.</p> <p>17 Q. So you're referring now to an</p> <p>18 understanding of the transaction you</p> <p>19 developed over months or years. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. So what I want to understand is</p> <p>22 before you testified in Kentucky, did you</p> <p>23 have a meeting or a telephone call with</p> <p>24 anyone to prepare for that testimony</p> <p>25 specifically?</p>	<p style="text-align: right;">Page 131</p> <p>1 B. Gunderman</p> <p>2 A. I don't recall the exact details</p> <p>3 of who was at a meeting for preparation,</p> <p>4 but I do recall that we had preparations.</p> <p>5 I just don't recall the details of what we</p> <p>6 went through.</p> <p>7 Q. And those preparations would</p> <p>8 have been within days or a week of the</p> <p>9 testimony?</p> <p>10 A. I don't recall the details of</p> <p>11 it, so...</p> <p>12 Q. But you understand I'm asking</p> <p>13 about preparation specifically for your</p> <p>14 Kentucky testimony. You understand that?</p> <p>15 A. I do.</p> <p>16 Q. And in those preparations</p> <p>17 specifically for the Kentucky testimony,</p> <p>18 did someone tell you about retained title?</p> <p>19 MR. MARKS: Objection. This is</p> <p>20 the eighth time asking the same</p> <p>21 question.</p> <p>22 MR. FRIEDMAN: The record will</p> <p>23 reflect what it reflects.</p> <p>24 Q. You may answer the question.</p> <p>25 A. I don't recall any specific</p>
<p style="text-align: right;">Page 132</p> <p>1 B. Gunderman</p> <p>2 conversations or sequencing of events that</p> <p>3 I could elaborate any further than I have</p> <p>4 the last eight times you asked it.</p> <p>5 Q. Just to be clear --</p> <p>6 MR. MARKS: Ed, this is becoming</p> <p>7 harassment.</p> <p>8 MR. FRIEDMAN: I'm not</p> <p>9 harassing.</p> <p>10 MR. MARKS: We're done with this</p> <p>11 question.</p> <p>12 MR. FRIEDMAN: We're trying to</p> <p>13 get through this.</p> <p>14 MR. MARKS: We're done with this</p> <p>15 question.</p> <p>16 BY MR. FRIEDMAN:</p> <p>17 Q. In the preparation you engaged</p> <p>18 in specifically for the Kentucky</p> <p>19 testimony, do you have a recollection of</p> <p>20 anyone explaining to you retained title?</p> <p>21 A. Not specifically.</p> <p>22 Q. Do you have a recollection of</p> <p>23 who, at any time, explained retained title</p> <p>24 to you?</p> <p>25 You may answer.</p>	<p style="text-align: right;">Page 133</p> <p>1 B. Gunderman</p> <p>2 MR. MARKS: You can answer that</p> <p>3 question.</p> <p>4 A. I don't recall specific</p> <p>5 discussions around it. I can simply say</p> <p>6 that, given the structuring of the</p> <p>7 transaction being led by our general</p> <p>8 counsel, you know, I wouldn't be surprised</p> <p>9 if I would have had conversations with him</p> <p>10 about the topic.</p> <p>11 Q. And is it your testimony today</p> <p>12 that you have a specific recollection of</p> <p>13 someone using the term "administrative</p> <p>14 ease" in connection with explaining</p> <p>15 retained title?</p> <p>16 MR. MARKS: Objection to this</p> <p>17 question.</p> <p>18 Q. You may answer the question.</p> <p>19 MR. MARKS: Only to the extent</p> <p>20 it does not --</p> <p>21 MR. FRIEDMAN: It's a yes or no</p> <p>22 question.</p> <p>23 MR. MARKS: It's not. Only to</p> <p>24 the -- you asked for a content of a</p> <p>25 conversation. Only to the extent</p>

1 B. Gunderman  
2 you're not revealing a communication  
3 had with counsel.

4 Why don't you read back the  
5 question?

6 Q. The question was --

7 MR. MARKS: Read back the  
8 question.

9 (Record was read back by the  
10 court reporter as follows:

11 "QUESTION: And is it your  
12 testimony today that you have a  
13 specific recollection of someone using  
14 the term "administrative ease" in  
15 connection with explaining retained  
16 title?")

17 A. I don't have a specific  
18 recollection.

19 Q. Mr. Gunderman, did you review  
20 your Kentucky testimony yesterday?

21 A. I reviewed portions of my  
22 Kentucky testimony, as I read the  
23 Complaint. I wanted to review certain  
24 sections.

25 Q. When did you review portions of

1 B. Gunderman  
2 your Kentucky testimony?

3 A. I don't remember the exact times  
4 I reviewed it.

5 Q. Did you review any portion of  
6 your Kentucky testimony yesterday or  
7 today?

8 A. I recall reviewing portions of  
9 it this week. I think I may have reviewed  
10 something yesterday.

11 Q. And did the portion you reviewed  
12 yesterday include page 26 of your  
13 testimony, the page I was asking you  
14 about?

15 A. 26 is -- yes, I did.

16 Q. You did.

17 And are there any other portions  
18 you reviewed yesterday?

19 A. I don't recall specifically what  
20 other sections.

21 Q. Do you know that John Fletcher  
22 testified at a deposition yesterday?

23 MR. MARKS: Objection to the  
24 form of the question.

25 Go ahead.

1 B. Gunderman

2 A. I do.

3 Q. And did you review any portions  
4 of Mr. Fletcher's testimony?

5 A. No. From yesterday?

6 MR. MARKS: Objection to form.

7 Q. From yesterday, correct.

8 A. No.

9 Q. Did anybody tell you what  
10 Mr. Fletcher testified to yesterday?

11 A. No.

12 Q. I'm going to show you a document  
13 previously marked as Exhibit 3. The first  
14 thing I'm going to ask you, Mr. Gunderman,  
15 and of course you should feel free to  
16 review whatever you want to review, if you  
17 look at the very last page of Exhibit 3  
18 where your name Bob Gunderman appears, is  
19 that your signature?

20 A. That is my signature on the last  
21 page of this exhibit.

22 Q. And did you sign this  
23 verification in front of a notary where it  
24 says, "Sworn to before me on this 13th day  
25 of October 2017"?

1 B. Gunderman

2 A. It appears that I did.

3 Q. And in the verification that's  
4 above your signature, you say that you are  
5 authorized to make this declaration on  
6 behalf of Services.

7 Was that true?

8 A. Yes.

9 Q. And the next sentence says:  
10 "I have read and know the  
11 contents of the foregoing verified  
12 counterclaims."

13 Was that true?

14 A. Yes.

15 MR. MARKS: Objection to form.

16 Q. You said -- the verification  
17 also says:

18 "The information contained in  
19 the verified counterclaims is true and  
20 correct to the best of my present  
21 knowledge information and belief."

22 MR. MARKS: Objection to form.

23 Q. Was that truthful when you  
24 signed your name?

25 A. Yes.

1 B. Gunderman  
 2 Q. And the last sentence says:  
 3 "I declare under penalty of  
 4 perjury under the laws of the United  
 5 States of America that the foregoing is  
 6 true and correct."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. And was the foregoing true and  
 10 correct?  
 11 A. Yes.  
 12 Q. Let me ask you, please, to take  
 13 a look at paragraph 5, which is on page 4  
 14 of the document. Tell me when you're  
 15 there.  
 16 A. Page 4, paragraph 5?  
 17 Q. Correct.  
 18 A. I'm there.  
 19 Q. And you understand that a note  
 20 holder on September 21st served a notice  
 21 of default with respect to the indenture  
 22 for the 2023 notes?  
 23 A. Yes.  
 24 Q. And do you understand the nature  
 25 of the default asserted in that notice of

1 B. Gunderman  
 2 default?  
 3 A. Yes, I read the original  
 4 assertions.  
 5 Q. And you understand that the  
 6 notice of default asserted that the April  
 7 24, 2015 transaction entailed a sale and  
 8 leaseback in violation of the indenture,  
 9 correct?  
 10 A. I understand that was the  
 11 assertion, yes.  
 12 Q. And did you have a view -- at  
 13 the time you signed this verification, did  
 14 you have a view as to whether the April  
 15 24, 2015 transaction violated or did not  
 16 violate the indenture?  
 17 MR. MARKS: Objection to the  
 18 form of the question.  
 19 A. I had a view that it did not  
 20 violate the terms of the indenture.  
 21 Q. Okay. And did you discuss your  
 22 view with anyone at Windstream prior to  
 23 the time you signed this verification?  
 24 MR. MARKS: That's a yes/no  
 25 question.

1 B. Gunderman  
 2 A. Yes.  
 3 Q. And who are the people at  
 4 Windstream with whom you discussed your  
 5 view?  
 6 A. My recollection is I would have  
 7 discussed this document and my eventual  
 8 assertions in response here with John  
 9 Fletcher and Christie Moody.  
 10 Q. Am I correct that you saw the  
 11 notice of default on September 21, 2017 or  
 12 within a day or two thereafter?  
 13 A. I don't remember the exact  
 14 timing, but I mean, within the time it  
 15 came, I certainly saw it.  
 16 Q. Starting from the time you first  
 17 saw the notice of default, did you discuss  
 18 the contents of that notice of default or  
 19 your views about it with anyone other than  
 20 John Fletcher or Ms. Moody?  
 21 A. I don't recall others,  
 22 discussing with others. Could have been  
 23 others. I just don't remember.  
 24 Q. Do you recall if anyone at  
 25 Windstream expressed the view that the

1 B. Gunderman  
 2 assertion in the notice of default was  
 3 correct?  
 4 A. No one made that comment to me.  
 5 Q. Are there others at Windstream  
 6 who have expressed to you the view that  
 7 there was no default under the indenture  
 8 by virtue of the April 24, 2015  
 9 transaction?  
 10 MR. MARKS: Objection. Again,  
 11 just so long as you're not talking  
 12 about conversations where counsel --  
 13 in which counsel was providing advice  
 14 or there was discussion with counsel  
 15 about this topic.  
 16 A. I relied heavily on advice of  
 17 counsel for the discussions, and that's  
 18 the extent of my conversations.  
 19 Q. When you saw the notice of  
 20 default, did you have an understanding of  
 21 the time periods under the indenture?  
 22 A. Can you be more specific?  
 23 Q. Yes.  
 24 When you saw the notice of  
 25 default, did you have any understanding



1 B. Gunderman

2 with respect to the cure period?

3 A. I consulted with our counsel  
4 about that.

5 Q. I'm not asking you about what  
6 you and your counsel discussed. At the  
7 time you signed this verification, did you  
8 understand that the indenture contained a  
9 60-day cure period?

10 A. Yes.

11 Q. And did you understand under the  
12 indenture what would happen at the end of  
13 that 60-day cure period?

14 MR. MARKS: Objection to the  
15 form.

16 A. I understood that absent a cure,  
17 there could be an event of default.

18 Q. And did you have an  
19 understanding as to what the note holder  
20 or the trustee could do upon an event of  
21 default?

22 A. Yes. Generally acceleration of  
23 the payment of our debt.

24 Q. Sending a notice of  
25 acceleration?

1 B. Gunderman

2 A. Yes.

3 Q. And did you have an  
4 understanding as to what would happen if a  
5 notice of acceleration was sent to  
6 Windstream?

7 MR. MARKS: Objection to the  
8 form of the question.

9 A. Could you be more specific in  
10 what you're --

11 Q. Yes. You understood there was a  
12 possibility that on day 61 a notice of  
13 acceleration could be delivered to  
14 Windstream?

15 A. Yes.

16 Q. And did you consider the  
17 possibility that when the notice of  
18 acceleration arrived, Windstream would  
19 write a check to pay the principal balance  
20 of the notes in full?

21 MR. MARKS: Objection to the  
22 extent you're not relying on  
23 conversations that you had with  
24 counsel, after receiving this notice  
25 of default, then you can answer.

1 B. Gunderman

2 Q. Just to be clear, I'm not asking  
3 about legal advice. I'm talking to the  
4 chief financial officer, who understood  
5 that a notice of acceleration might  
6 arrive.

7 And I'm asking you, sir, as  
8 chief financial officer, whether you  
9 considered the possibility that Windstream  
10 would write a check on November 21st to  
11 pay the full balance of the 2023 notes?

12 MR. MARKS: I'm giving you the  
13 same instruction that since he's  
14 asking about things that happened  
15 after the notice of default occurred,  
16 if your answer is based on  
17 conversations that you had with  
18 counsel, I will instruct you not to  
19 answer.

20 A. Yeah, my discussions would have  
21 been with counsel, and I would not want to  
22 answer that.

23 Q. Did you discuss with counsel  
24 what could be the consequences for  
25 Windstream if a notice of acceleration

1 B. Gunderman  
2 arrived on day 61?

3 MR. MARKS: I'm going to  
4 instruct him not to answer that  
5 question based on attorney-client  
6 privilege.

7 Q. Do you have any knowledge or  
8 information about the potential  
9 consequences for Windstream upon receipt  
10 of a notice of acceleration other than  
11 what you discussed with counsel?

12 I will ask the question a  
13 different way.

14 MR. MARKS: Please.

15 Q. Tell me, Mr. Gunderman, as best  
16 you can, your understanding as to the  
17 consequences for Windstream if the note  
18 holder or the trustee were to send a  
19 notice of acceleration on day 61.

20 MR. MARKS: You can answer that  
21 question.

22 A. I didn't practically consider  
23 those hypothetical consequences as I  
24 judged them to be irrelevant and remote.

25 Q. Have you given consideration to

<p style="text-align: right;">Page 146</p> <p>1 B. Gunderman</p> <p>2 those consequences any further since you</p> <p>3 signed the verification?</p> <p>4 MR. MARKS: Same instruction.</p> <p>5 To the extent this involves</p> <p>6 communications that you may have had</p> <p>7 with counsel, I'm going to instruct</p> <p>8 you not to answer.</p> <p>9 A. Well, then I won't answer then.</p> <p>10 MR. FRIEDMAN: Let's take couple</p> <p>11 of minutes.</p> <p>12 MR. MARKS: Sure.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 2:14. We're going off the record.</p> <p>15 (Thereupon, a recess was taken,</p> <p>16 and then the proceedings continued as</p> <p>17 follows:)</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 2:31, and we're back on the record.</p> <p>20 BY MR. FRIEDMAN:</p> <p>21 Q. Mr. Gunderman, you testified</p> <p>22 this morning about a cash generated by</p> <p>23 subsidiaries of Services. Do you recall</p> <p>24 that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 147</p> <p>1 B. Gunderman</p> <p>2 Q. And I know we have financial</p> <p>3 statements for the subsidiaries that</p> <p>4 enable us to see how much cash is being</p> <p>5 generated by each subsidiary, correct?</p> <p>6 A. We do.</p> <p>7 Q. And the question I have for you</p> <p>8 as CFO, without studying all the financial</p> <p>9 statements for all the subsidiaries, do</p> <p>10 you have a general sense, when you look at</p> <p>11 the total annual cash generated by</p> <p>12 Services subsidiaries, what proportion is</p> <p>13 generated by the transferor subsidiaries?</p> <p>14 A. I don't. I don't know the</p> <p>15 answer to that. I don't review our</p> <p>16 financials or manage our business under</p> <p>17 those terms.</p> <p>18 Q. So you wouldn't know whether the</p> <p>19 transferor subsidiaries account for half</p> <p>20 the cash, or less than half, or more than</p> <p>21 half? You just don't know?</p> <p>22 A. I don't know. I have not done</p> <p>23 the analysis.</p> <p>24 Q. But anybody could read the</p> <p>25 financial statements and determine?</p>
<p style="text-align: right;">Page 148</p> <p>1 B. Gunderman</p> <p>2 A. Yes, they could.</p> <p>3 Q. Do you know what a capital lease</p> <p>4 is?</p> <p>5 A. Generally, yes.</p> <p>6 Q. And what's a capital lease?</p> <p>7 A. It's a lease, it's a long-term</p> <p>8 lease obligation, you know, an agreement</p> <p>9 between two parties to lease assets for</p> <p>10 consideration. Generally, that's how I</p> <p>11 think about the definition.</p> <p>12 Q. How is a capital lease accounted</p> <p>13 for under GAAP?</p> <p>14 A. I have to review all the rules.</p> <p>15 But generally speaking, there's a present</p> <p>16 value of the lease payments under the</p> <p>17 obligation that are measured to net</p> <p>18 present value of dollars and placed on the</p> <p>19 balance sheet as an obligation.</p> <p>20 Q. Am I correct that the assets</p> <p>21 that are the subject of the capital lease</p> <p>22 remain on the balance sheet as if owned by</p> <p>23 the lessee entity?</p> <p>24 A. I would have to go back and</p> <p>25 review all the accounting rules. I didn't</p>	<p style="text-align: right;">Page 149</p> <p>1 B. Gunderman</p> <p>2 prepare for that testimony for today.</p> <p>3 Q. Generally speaking, if the</p> <p>4 transaction here had been accounted for as</p> <p>5 a capital lease, would the accounting</p> <p>6 treatment be different or the same as the</p> <p>7 accounting treatment that we actually</p> <p>8 have?</p> <p>9 A. I didn't prepare the analysis or</p> <p>10 do the work in advance to answer that</p> <p>11 question, and so I'd be speculating</p> <p>12 without having done the analysis to answer</p> <p>13 that.</p> <p>14 Q. I'm going to show you -- well,</p> <p>15 am I correct that a capital lease is</p> <p>16 basically a financing with the assets</p> <p>17 staying on the balance sheet of the</p> <p>18 entities and the present value of the</p> <p>19 liabilities being treated as a liability</p> <p>20 on the balance sheet?</p> <p>21 A. Generally speaking, I think</p> <p>22 that's accurate.</p> <p>23 Q. I'm going to show you a document</p> <p>24 that we marked as Exhibit 50. Not</p> <p>25 previously marked.</p>

1 B. Gunderman  
2 (Exhibit 50, Duff & Phelps  
3 opinion, Bates stamped WIN 13984  
4 through WIN 14039, marked for  
5 identification, as of this date.)

6 BY MR. FRIEDMAN:

7 Q. Mr. Gunderman, before you look  
8 at the document, can I ask you, are you a  
9 CPA?

10 A. I am. I'm in inactive status,  
11 but I am a CPA.

12 Q. So I handed you Exhibit 50, and  
13 Exhibit 50 is WIN 13984 through WIN 14039  
14 and my first question is to ask you if  
15 this is something you've seen prior to  
16 today?

17 A. If you can give me a second,  
18 I'll review this.

19 Q. Yes. And when I ask if you've  
20 seen this, I would appreciate your telling  
21 me if you've seen any part of it.

22 A. I have reviewed this generally,  
23 and so can you repeat your question?

24 Q. Yes.  
25 My first question is whether

1 B. Gunderman  
2 prior to today you have seen this document  
3 or any part of it?

4 A. I have not reviewed this  
5 recently. But I do, I recall, if I'm  
6 recognizing this properly, this appears to  
7 be the opinion that we received from the  
8 firm of Duff & Phelps as part of the  
9 considerations and approval with going  
10 forward with the REIT transaction. We  
11 sought an opinion about the solvency of  
12 the transaction. And we presented that,  
13 as I recall -- we presented this to our  
14 board.

15 Q. Were you involved in obtaining a  
16 solvency opinion from Duff & Phelps?

17 A. I was involved in the process.  
18 It's been some time since I've been  
19 through the opinion, but yes, I was  
20 involved in the process.

21 Q. What was your nature of your  
22 involvement in the process?

23 A. My recollection, generally, is I  
24 would have been consulted upon some of the  
25 key assumptions on the transactions or the

1 B. Gunderman  
2 financial characteristics of the  
3 transaction and the abilities of the  
4 companies from a, financial projections,  
5 and which obviously would be assumptions  
6 that Duff & Phelps would have used to  
7 construct their analysis, independent  
8 analysis, so obviously they took our  
9 assumptions and made their own assumptions  
10 and prepared an independent analysis for  
11 our board.

12 Q. And you made sure at the time  
13 that the information provided to Duff &  
14 Phelps was accurate and correct?

15 A. Well, it was accurate and  
16 correct, to the best of our knowledge.  
17 Obviously, there was a lot of forecasted  
18 information, and forecasts are forecasts,  
19 and they are based on lots of assumptions  
20 that could change over time.

21 Q. You understood that the board  
22 would have to be satisfied that the Duff &  
23 Phelps's opinion was correct as part of the  
24 process of approving the transaction?

25 A. I understood that, yes.

1 B. Gunderman  
2 Q. Let me ask, can you take a look,  
3 please, at page WIN 14007, which is the  
4 balance sheet analysis within the file  
5 Duff & Phelps opinion.

6 A. WIN 14007?

7 Q. 14007, yes.

8 A. I'm looking at that page.

9 Q. The first question I have is, if  
10 you look down just prior to the footnotes,  
11 the entry says net asset value -- sorry.

12 Go up above that a little bit.  
13 Sorry. You see the box above that where  
14 it says, "Net asset value Windstream  
15 Services, LLC 1 billion 924 million"?

16 A. I see the reference.

17 Q. Okay. And do you have -- so let  
18 me just ask, we have -- if you look up  
19 above, you see how Duff & Phelps  
20 calculated the net asset value for  
21 Windstream Services, LLC?

22 A. I see the reference on this  
23 page, yes.

24 Q. What we see is that Duff &  
25 Phelps has an adjusted enterprise value

1 B. Gunderman  
 2 conclusion of 13 billion 300 million,  
 3 correct?  
 4 A. I see that, yes.  
 5 Q. And then there are some  
 6 deductions and additions to arrive at a  
 7 net asset value; is that correct?  
 8 A. Yes.  
 9 Q. Am I correct that one of the  
 10 deductions set by Duff & Phelps is  
 11 capitalize rent \$6 billion 300 million; is  
 12 that correct?  
 13 A. That is what it shows, yes.  
 14 Q. Am I correct that that  
 15 capitalized rent would be a net present  
 16 value figure for the rent due under the  
 17 master lease?  
 18 A. Well, again, I didn't review  
 19 this presentation in advance of this  
 20 deposition. I could only go with what I  
 21 see on the page, which is a footnote  
 22 disclosure of, tied to that number, which  
 23 says it's capitalized at eight times 2015,  
 24 initial rent of 650 million plus existing  
 25 leases of 134 million.

1 B. Gunderman  
 2 made, the analysis is done reasonably.  
 3 Q. And you're not aware of any  
 4 assumption that is erroneous, correct?  
 5 A. Well, again, I was just handed  
 6 the exhibit about a few minutes ago, so it  
 7 would not be correct for me to say I have  
 8 had enough time to rereview this  
 9 presentation and offer a comment at this  
 10 point.  
 11 But I'm not aware of any  
 12 assumption, as I sit here today, but just  
 13 with the backdrop that I just got it  
 14 again.  
 15 Q. You did review the Duff & Phelps  
 16 opinion at the time, correct?  
 17 A. I did.  
 18 Q. And you did not conclude there  
 19 was something incorrect in here, correct?  
 20 A. Correct.  
 21 Q. And did you recommend that the  
 22 board of directors accept this?  
 23 A. Yes.  
 24 MR. FRIEDMAN: I have no further  
 25 questions. No further questions.

1 B. Gunderman  
 2 Q. And you understand that the 650  
 3 million refers to the master lease,  
 4 correct?  
 5 A. It would be my judgment, as I  
 6 sit here today, that is likely what is  
 7 meant there, without reviewing the full  
 8 presentation in the last two, three  
 9 minutes.  
 10 Q. And the reference in footnote 3  
 11 to 8.0X, that tells you that it is an  
 12 estimate of the present value of the  
 13 obligation, correct?  
 14 A. It is my understanding that this  
 15 is a way to reflect the net present value  
 16 of an obligation like this. I've seen it  
 17 done differently, but this is a way.  
 18 Q. And do you see anything wrong in  
 19 the methodology and calculations by Duff &  
 20 Phelps in determining the net asset value  
 21 of Windstream Services, LLC?  
 22 A. I don't see anything wrong with  
 23 it. I think it's a reasoned analysis  
 24 based on many assumptions, and I think  
 25 based upon the assumptions that they've

1 B. Gunderman  
 2 Thank you.  
 3 MR. MARKS: Non here. Thank  
 4 you.  
 5 THE VIDEOGRAPHER: The time is  
 6 2:45. We're off the record.  
 7 (Time noted: 2:45 p.m.)  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25